

109TH CONGRESS
1ST SESSION

S. 359

To provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H-2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2005

Mr. CRAIG (for himself, Mr. KENNEDY, Mr. HAGEL, Mr. SPECTER, Mr. LAUTENBERG, Mr. VOINOVICH, Mr. SCHUMER, Mr. LUGAR, Mr. DURBIN, Mr. COLEMAN, Mr. KERRY, Mr. MCCAIN, Mr. DODD, Mr. COCHRAN, Mr. DOMENICI, Ms. CANTWELL, Mr. DEWINE, Mr. LIEBERMAN, Mr. BURNS, Mrs. BOXER, Mr. ROBERTS, Mr. LEAHY, Mr. HATCH, Mr. AKAKA, Mr. LOTT, Mr. NELSON of Nebraska, Mr. BROWNBACK, Mr. LEVIN, Mr. STEVENS, Mr. WYDEN, Mr. MARTINEZ, Mr. SALAZAR, Mr. CHAFEE, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H-2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Agricultural Job Opportunities, Benefits, and Security
4 Act of 2005”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—ADJUSTMENT TO LAWFUL STATUS

Sec. 101. Agricultural workers.

Sec. 102. Correction of Social Security records.

TITLE II—REFORM OF H-2A WORKER PROGRAM

Sec. 201. Amendment to the Immigration and Nationality Act.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Determination and use of user fees.

Sec. 302. Regulations.

Sec. 303. Effective date.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) AGRICULTURAL EMPLOYMENT.—The term
10 “agricultural employment” means any service or ac-
11 tivity that is considered to be agricultural under sec-
12 tion 3(f) of the Fair Labor Standards Act of 1938
13 (29 U.S.C. 203(f)) or agricultural labor under sec-
14 tion 3121(g) of the Internal Revenue Code of 1986
15 (26 U.S.C. 3121(g)). For purposes of this para-
16 graph, agricultural employment includes employment
17 under section 101(a)(15)(H)(ii)(a) of the Immigra-

1 tion and Nationality Act (8 U.S.C.
2 1101(a)(15)(H)(ii)(a)).

3 (2) EMPLOYER.—The term “employer” means
4 any person or entity, including any farm labor con-
5 tractor and any agricultural association, that em-
6 ploys workers in agricultural employment.

7 (3) JOB OPPORTUNITY.—The term “job oppor-
8 tunity” means a job opening for temporary full-time
9 employment at a place in the United States to which
10 United States workers can be referred.

11 (4) SECRETARY.—The term “Secretary” means
12 the Secretary of Homeland Security.

13 (5) TEMPORARY.—A worker is employed on a
14 “temporary” basis where the employment is in-
15 tended not to exceed 10 months.

16 (6) UNITED STATES WORKER.—The term
17 “United States worker” means any worker, whether
18 a United States citizen or national, a lawfully admit-
19 ted permanent resident alien, or any other alien,
20 who is authorized to work in the job opportunity
21 within the United States, except an alien admitted
22 or otherwise provided status under section
23 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
24 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

1 (7) WORK DAY.—The term “work day” means
 2 any day in which the individual is employed 1 or
 3 more hours in agriculture consistent with the defini-
 4 tion of “man-day” under section 3(u) of the Fair
 5 Labor Standards Act of 1938 (29 U.S.C. 203(u)).

6 **TITLE I—ADJUSTMENT TO**
 7 **LAWFUL STATUS**

8 **SEC. 101. AGRICULTURAL WORKERS.**

9 (a) TEMPORARY RESIDENT STATUS.—

10 (1) IN GENERAL.—Notwithstanding any other
 11 provision of law, the Secretary shall confer upon an
 12 alien who qualifies under this subsection the status
 13 of an alien lawfully admitted for temporary residence
 14 if the Secretary determines that the alien—

15 (A) has performed agricultural employment
 16 in the United States for at least 575 hours or
 17 100 work days, whichever is less, during any 12
 18 consecutive months during the 18-month period
 19 ending on December 31, 2004;

20 (B) applied for such status during the 18-
 21 month application period beginning on the first
 22 day of the seventh month that begins after the
 23 date of enactment of this Act; and

24 (C) is otherwise admissible to the United
 25 States under section 212 of the Immigration

1 and Nationality Act (8 U.S.C. 1182), except as
2 otherwise provided under subsection (e)(2).

3 (2) AUTHORIZED TRAVEL.—During the period
4 an alien is in lawful temporary resident status
5 granted under this subsection, the alien has the
6 right to travel abroad (including commutation from
7 a residence abroad) in the same manner as an alien
8 lawfully admitted for permanent residence.

9 (3) AUTHORIZED EMPLOYMENT.—During the
10 period an alien is in lawful temporary resident sta-
11 tus granted under this subsection, the alien shall be
12 provided an “employment authorized” endorsement
13 or other appropriate work permit, in the same man-
14 ner as an alien lawfully admitted for permanent resi-
15 dence.

16 (4) TERMINATION OF TEMPORARY RESIDENT
17 STATUS.—

18 (A) IN GENERAL.—During the period of
19 temporary resident status granted an alien
20 under this subsection, the Secretary may termi-
21 nate such status only upon a determination
22 under this Act that the alien is deportable.

23 (B) GROUNDS FOR TERMINATION OF TEM-
24 PORARY RESIDENT STATUS.—Before any alien
25 becomes eligible for adjustment of status under

1 subsection (c), the Secretary may deny adjust-
2 ment to permanent resident status and provide
3 for termination of the temporary resident status
4 granted such alien under paragraph (1) if—

5 (i) the Secretary finds, by a prepon-
6 derance of the evidence, that the adjust-
7 ment to temporary resident status was the
8 result of fraud or willful misrepresentation
9 (as described in section 212(a)(6)(C)(i) of
10 the Immigration and Nationality Act (8
11 U.S.C. 1182(a)(6)(C)(i)); or

12 (ii) the alien—

13 (I) commits an act that makes
14 the alien inadmissible to the United
15 States as an immigrant, except as
16 provided under subsection (e)(2); or

17 (II) is convicted of a felony or 3
18 or more misdemeanors committed in
19 the United States.

20 (5) RECORD OF EMPLOYMENT.—

21 (A) IN GENERAL.—Each employer of a
22 worker granted status under this subsection
23 shall annually—

24 (i) provide a written record of employ-
25 ment to the alien; and

1 (ii) provide a copy of such record to
2 the Secretary.

3 (B) SUNSET.—The obligation under sub-
4 paragraph (A) shall terminate on the date that
5 is 6 years after the date of enactment of this
6 Act.

7 (b) RIGHTS OF ALIENS GRANTED TEMPORARY RESI-
8 DENT STATUS.—

9 (1) IN GENERAL.—Except as otherwise pro-
10 vided in this subsection, an alien who acquires the
11 status of an alien lawfully admitted for temporary
12 residence under subsection (a), such status not hav-
13 ing changed, shall be considered to be an alien law-
14 fully admitted for permanent residence for purposes
15 of any law other than any provision of the Immigra-
16 tion and Nationality Act (8 U.S.C. 1101 et seq.).

17 (2) DELAYED ELIGIBILITY FOR CERTAIN FED-
18 ERAL PUBLIC BENEFITS.—An alien who acquires the
19 status of an alien lawfully admitted for temporary
20 residence under subsection (a) as described in para-
21 graph (1) shall not be eligible, by reason of such ac-
22 quisition of that status, for any form of assistance
23 or benefit described in section 403(a) of the Per-
24 sonal Responsibility and Work Opportunity Rec-
25 onciliation Act of 1996 (8 U.S.C. 1613(a)) until 5

1 years after the date on which the Secretary confers
2 temporary resident status upon that alien under
3 subsection (a).

4 (3) TERMS OF EMPLOYMENT RESPECTING
5 ALIENS ADMITTED UNDER THIS SECTION.—

6 (A) PROHIBITION.—No alien granted tem-
7 porary resident status under subsection (a) may
8 be terminated from employment by any em-
9 ployer during the period of temporary resident
10 status except for just cause.

11 (B) TREATMENT OF COMPLAINTS.—

12 (i) ESTABLISHMENT OF PROCESS.—

13 The Secretary shall establish a process for
14 the receipt, initial review, and disposition
15 in accordance with this subparagraph of
16 complaints by aliens granted temporary
17 resident status under subsection (a) who
18 allege that they have been terminated with-
19 out just cause. No proceeding shall be con-
20 ducted under this subparagraph with re-
21 spect to a termination unless the Secretary
22 determines that the complaint was filed
23 not later than 6 months after the date of
24 the termination.

1 (ii) INITIATION OF ARBITRATION.—If
2 the Secretary finds that a complaint has
3 been filed in accordance with clause (i) and
4 there is reasonable cause to believe that
5 the complainant was terminated without
6 just cause, the Secretary shall initiate
7 binding arbitration proceedings by request-
8 ing the Federal Mediation and Conciliation
9 Service to appoint a mutually agreeable ar-
10 bitrator from the roster of arbitrators
11 maintained by such Service for the geo-
12 graphical area in which the employer is lo-
13 cated. The procedures and rules of such
14 Service shall be applicable to the selection
15 of such arbitrator and to such arbitration
16 proceedings. The Secretary shall pay the
17 fee and expenses of the arbitrator, subject
18 to the availability of appropriations for
19 such purpose.

20 (iii) ARBITRATION PROCEEDINGS.—
21 The arbitrator shall conduct the pro-
22 ceeding in accordance with the policies and
23 procedures promulgated by the American
24 Arbitration Association applicable to pri-
25 vate arbitration of employment disputes.

1 The arbitrator shall make findings respect-
2 ing whether the termination was for just
3 cause. The arbitrator may not find that
4 the termination was for just cause unless
5 the employer so demonstrates by a prepon-
6 derance of the evidence. If the arbitrator
7 finds that the termination was not for just
8 cause, the arbitrator shall make a specific
9 finding of the number of days or hours of
10 work lost by the employee as a result of
11 the termination. The arbitrator shall have
12 no authority to order any other remedy, in-
13 cluding, but not limited to, reinstatement,
14 back pay, or front pay to the affected em-
15 ployee. Within 30 days from the conclusion
16 of the arbitration proceeding, the arbi-
17 trator shall transmit the findings in the
18 form of a written opinion to the parties to
19 the arbitration and the Secretary. Such
20 findings shall be final and conclusive, and
21 no official or court of the United States
22 shall have the power or jurisdiction to re-
23 view any such findings.

24 (iv) EFFECT OF ARBITRATION FIND-
25 INGS.—If the Secretary receives a finding

1 of an arbitrator that an employer has ter-
2 minated an alien granted temporary resi-
3 dent status under subsection (a) without
4 just cause, the Secretary shall credit the
5 alien for the number of days or hours of
6 work lost for purposes of the requirement
7 of subsection (c)(1).

8 (v) TREATMENT OF ATTORNEY'S
9 FEES.—The parties shall bear the cost of
10 their own attorney's fees involved in the
11 litigation of the complaint.

12 (vi) NONEXCLUSIVE REMEDY.—The
13 complaint process provided for in this sub-
14 paragraph is in addition to any other
15 rights an employee may have in accordance
16 with applicable law.

17 (vii) EFFECT ON OTHER ACTIONS OR
18 PROCEEDINGS.—Any finding of fact or
19 law, judgment, conclusion, or final order
20 made by an arbitrator in the proceeding
21 before the Secretary shall not be conclusive
22 or binding in any separate or subsequent
23 action or proceeding between the employee
24 and the employee's current or prior em-
25 ployer brought before an arbitrator, admin-

1 administrative agency, court, or judge of any
2 State or the United States, regardless of
3 whether the prior action was between the
4 same or related parties or involved the
5 same facts, except that the arbitrator's
6 specific finding of the number of days or
7 hours of work lost by the employee as a re-
8 sult of the employment termination may be
9 referred to the Secretary pursuant to
10 clause (iv).

11 (C) CIVIL PENALTIES.—

12 (i) IN GENERAL.—If the Secretary
13 finds, after notice and opportunity for a
14 hearing, that an employer of an alien
15 granted temporary resident status under
16 subsection (a) has failed to provide the
17 record of employment required under sub-
18 section (a)(5) or has provided a false state-
19 ment of material fact in such a record, the
20 employer shall be subject to a civil money
21 penalty in an amount not to exceed \$1,000
22 per violation.

23 (ii) LIMITATION.—The penalty appli-
24 cable under clause (i) for failure to provide
25 records shall not apply unless the alien has

1 provided the employer with evidence of em-
2 ployment authorization granted under this
3 section.

4 (c) ADJUSTMENT TO PERMANENT RESIDENCE.—

5 (1) AGRICULTURAL WORKERS.—

6 (A) IN GENERAL.—Except as provided in
7 subparagraph (B), the Secretary shall adjust
8 the status of an alien granted lawful temporary
9 resident status under subsection (a) to that of
10 an alien lawfully admitted for permanent resi-
11 dence if the Secretary determines that the fol-
12 lowing requirements are satisfied:

13 (i) QUALIFYING EMPLOYMENT.—The
14 alien has performed at least 360 work days
15 or 2,060 hours, but in no case less than
16 2,060 hours, of agricultural employment in
17 the United States, during the 6-year period
18 beginning after the date of enactment of
19 this Act.

20 (ii) QUALIFYING YEARS.—The alien
21 has performed at least 75 work days or
22 430 hours, but in no case less than 430
23 hours, of agricultural employment in the
24 United States in at least 3 nonoverlapping
25 periods of 12 consecutive months during

1 the 6-year period beginning after the date
2 of enactment of this Act. Qualifying peri-
3 ods under this clause may include non-
4 consecutive 12-month periods.

5 (iii) QUALIFYING WORK IN FIRST 3
6 YEARS.—The alien has performed at least
7 240 work days or 1,380 hours, but in no
8 case less than 1,380 hours, of agricultural
9 employment during the 3-year period be-
10 ginning after the date of enactment of this
11 Act.

12 (iv) APPLICATION PERIOD.—The alien
13 applies for adjustment of status not later
14 than 7 years after the date of enactment
15 of this Act.

16 (v) PROOF.—In meeting the require-
17 ments of clauses (i), (ii), and (iii), an alien
18 may submit the record of employment de-
19 scribed in subsection (a)(5) or such docu-
20 mentation as may be submitted under sub-
21 section (d)(3).

22 (vi) DISABILITY.—In determining
23 whether an alien has met the requirements
24 of clauses (i), (ii), and (iii), the Secretary
25 shall credit the alien with any work days

1 lost because the alien was unable to work
2 in agricultural employment due to injury
3 or disease arising out of and in the course
4 of the alien's agricultural employment, if
5 the alien can establish such disabling in-
6 jury or disease through medical records.

7 (B) GROUNDS FOR DENIAL OF ADJUST-
8 MENT OF STATUS.—The Secretary may deny an
9 alien adjustment to permanent resident status,
10 and provide for termination of the temporary
11 resident status granted such alien under sub-
12 section (a), if—

13 (i) the Secretary finds by a prepon-
14 derance of the evidence that the adjust-
15 ment to temporary resident status was the
16 result of fraud or willful misrepresentation,
17 as described in section 212(a)(6)(C)(i) of
18 the Immigration and Nationality Act (8
19 U.S.C. 1182(a)(6)(C)(i)); or

20 (ii) the alien—

21 (I) commits an act that makes
22 the alien inadmissible to the United
23 States under section 212 of the Immi-
24 gration and Nationality Act (8 U.S.C.

1 1182), except as provided under sub-
2 section (e)(2); or

3 (II) is convicted of a felony or 3
4 or more misdemeanors committed in
5 the United States.

6 (C) GROUNDS FOR REMOVAL.—Any alien
7 granted temporary resident status under sub-
8 section (a) who does not apply for adjustment
9 of status under this subsection before the expi-
10 ration of the application period described in
11 subparagraph (A)(iv), or who fails to meet the
12 other requirements of subparagraph (A) by the
13 end of the applicable period, is deportable and
14 may be removed under section 240 of the Immi-
15 gration and Nationality Act (8 U.S.C. 1229a).
16 The Secretary shall issue regulations estab-
17 lishing grounds to waive subparagraph (A)(iii)
18 with respect to an alien who has completed at
19 least 200 days of the work requirement speci-
20 fied in such subparagraph in the event of a nat-
21 ural disaster which substantially limits the
22 availability of agricultural employment or a per-
23 sonal emergency that prevents compliance with
24 such subparagraph.

25 (2) SPOUSES AND MINOR CHILDREN.—

1 (A) IN GENERAL.—Notwithstanding any
2 other provision of law, the Secretary shall con-
3 fer the status of lawful permanent resident on
4 the spouse and minor child of an alien granted
5 status under paragraph (1), including any indi-
6 vidual who was a minor child on the date such
7 alien was granted temporary resident status, if
8 the spouse or minor child applies for such sta-
9 tus, or if the principal alien includes the spouse
10 or minor child in an application for adjustment
11 of status to that of a lawful permanent resi-
12 dent.

13 (B) TREATMENT OF SPOUSES AND MINOR
14 CHILDREN BEFORE ADJUSTMENT OF STATUS.—
15 A spouse and minor child of an alien granted
16 temporary resident status under subsection (a)
17 may not be—

18 (i) removed while such alien maintains
19 such status, except as provided in subpara-
20 graph (C); and

21 (ii) granted authorization to engage in
22 employment in the United States or be
23 provided an “employment authorized” en-
24 dorsement or other work permit, unless

1 such employment authorization is granted
2 under another provision of law.

3 (C) GROUNDS FOR DENIAL OF ADJUST-
4 MENT OF STATUS AND REMOVAL.—The Sec-
5 retary may deny an alien spouse or child ad-
6 justment of status under subparagraph (A) and
7 may remove such spouse or child under section
8 240 of the Immigration and Nationality Act (8
9 U.S.C. 1229a) if the spouse or child—

10 (i) commits an act that makes the
11 alien spouse or child inadmissible to the
12 United States under section 212 of such
13 Act (8 U.S.C. 1182), except as provided
14 under subsection (e)(2); or

15 (ii) is convicted of a felony or 3 or
16 more misdemeanors committed in the
17 United States.

18 (d) APPLICATIONS.—

19 (1) TO WHOM MAY BE MADE.—

20 (A) WITHIN THE UNITED STATES.—The
21 Secretary shall provide that—

22 (i) applications for temporary resident
23 status under subsection (a) may be filed—

1 (I) with the Secretary, but only if
2 the applicant is represented by an at-
3 torney; or

4 (II) with a qualified designated
5 entity (designated under paragraph
6 (2)), but only if the applicant consents
7 to the forwarding of the application to
8 the Secretary; and

9 (ii) applications for adjustment of sta-
10 tus under subsection (c) shall be filed di-
11 rectly with the Secretary.

12 (B) OUTSIDE THE UNITED STATES.—The
13 Secretary, in cooperation with the Secretary of
14 State, shall establish a procedure whereby an
15 alien may apply for temporary resident status
16 under subsection (a) at an appropriate consular
17 office outside the United States.

18 (C) PRELIMINARY APPLICATIONS.—

19 (i) IN GENERAL.—During the applica-
20 tion period described in subsection
21 (a)(1)(B), the Secretary may grant admis-
22 sion to the United States as a temporary
23 resident and provide an “employment au-
24 thorized” endorsement or other appro-
25 priate work permit to any alien who pre-

1 sents a preliminary application for such
2 status under subsection (a) at a designated
3 port of entry on the southern land border
4 of the United States. An alien who does
5 not enter through a port of entry is subject
6 to deportation and removal as otherwise
7 provided in this Act.

8 (ii) DEFINITION.—For purposes of
9 clause (i), the term “preliminary applica-
10 tion” means a fully completed and signed
11 application which contains specific infor-
12 mation concerning the performance of
13 qualifying employment in the United
14 States, together with the payment of the
15 appropriate fee and the submission of pho-
16 tographs and the documentary evidence
17 which the applicant intends to submit as
18 proof of such employment.

19 (iii) ELIGIBILITY.—An applicant
20 under clause (i) shall otherwise be admis-
21 sible to the United States under subsection
22 (e)(2) and shall establish to the satisfac-
23 tion of the examining officer during an
24 interview that the applicant’s claim to eli-

1 gibility for temporary resident status is
2 credible.

3 (D) TRAVEL DOCUMENTATION.—The Sec-
4 retary shall provide each alien granted status
5 under this section with a counterfeit-resistant
6 document of authorization to enter or reenter
7 the United States that meets the requirements
8 established by the Secretary.

9 (2) DESIGNATION OF ENTITIES TO RECEIVE AP-
10 PLICATIONS.—

11 (A) IN GENERAL.—For purposes of receiv-
12 ing applications under subsection (a), the Sec-
13 retary—

14 (i) shall designate qualified farm labor
15 organizations and associations of employ-
16 ers; and

17 (ii) may designate such other persons
18 as the Secretary determines are qualified
19 and have substantial experience, dem-
20 onstrate competence, and have traditional
21 long-term involvement in the preparation
22 and submittal of applications for adjust-
23 ment of status under section 209, 210, or
24 245 of the Immigration and Nationality
25 Act, Public Law 89–732, Public Law 95–

1 145, or the Immigration Reform and Con-
2 trol Act of 1986.

3 (B) REFERENCES.—Organizations, asso-
4 ciations, and persons designated under subpara-
5 graph (A) are referred to in this Act as “quali-
6 fied designated entities”.

7 (3) PROOF OF ELIGIBILITY.—

8 (A) IN GENERAL.—An alien may establish
9 that the alien meets the requirement of sub-
10 section (a)(1)(A) or (c)(1)(A) through govern-
11 ment employment records or records supplied
12 by employers or collective bargaining organiza-
13 tions, and other reliable documentation as the
14 alien may provide. The Secretary shall establish
15 special procedures to properly credit work in
16 cases in which an alien was employed under an
17 assumed name.

18 (B) DOCUMENTATION OF WORK HIS-
19 TORY.—

20 (i) BURDEN OF PROOF.—An alien ap-
21 plying for status under subsection (a)(1)
22 or (c)(1) has the burden of proving by a
23 preponderance of the evidence that the
24 alien has worked the requisite number of

1 hours or days (as required under sub-
2 section (a)(1)(A) or (c)(1)(A)).

3 (ii) **TIMELY PRODUCTION OF**
4 **RECORDS.**—If an employer or farm labor
5 contractor employing such an alien has
6 kept proper and adequate records respect-
7 ing such employment, the alien’s burden of
8 proof under clause (i) may be met by se-
9 curing timely production of those records
10 under regulations to be promulgated by the
11 Secretary.

12 (iii) **SUFFICIENT EVIDENCE.**—An
13 alien can meet the burden of proof under
14 clause (i) to establish that the alien has
15 performed the work described in subsection
16 (a)(1)(A) or (c)(1)(A) by producing suffi-
17 cient evidence to show the extent of that
18 employment as a matter of just and rea-
19 sonable inference.

20 (4) **TREATMENT OF APPLICATIONS BY QUALI-**
21 **FIED DESIGNATED ENTITIES.**—Each qualified des-
22 ignated entity shall agree to forward to the Sec-
23 retary applications filed with it in accordance with
24 paragraph (1)(A)(i)(II) but shall not forward to the
25 Secretary applications filed with it unless the appli-

1 cant has consented to such forwarding. No such en-
2 tity may make a determination required by this sec-
3 tion to be made by the Secretary. Upon the request
4 of the alien, a qualified designated entity shall assist
5 the alien in obtaining documentation of the work
6 history of the alien.

7 (5) LIMITATION ON ACCESS TO INFORMA-
8 TION.—Files and records prepared for purposes of
9 this subsection by qualified designated entities oper-
10 ating under this subsection are confidential and the
11 Secretary shall not have access to such files or
12 records relating to an alien without the consent of
13 the alien, except as allowed by a court order issued
14 pursuant to paragraph (6).

15 (6) CONFIDENTIALITY OF INFORMATION.—

16 (A) IN GENERAL.—Except as otherwise
17 provided in this subsection, neither the Sec-
18 retary, nor any other official or employee of the
19 Department of Homeland Security, or bureau
20 or agency thereof, may—

21 (i) use the information furnished by
22 the applicant pursuant to an application
23 filed under this section, the information
24 provided to the applicant by a person des-
25 ignated under paragraph (2)(A), or any in-

1 formation provided by an employer or
2 former employer, for any purpose other
3 than to make a determination on the appli-
4 cation, or for enforcement of paragraph
5 (7);

6 (ii) make any publication whereby the
7 information furnished by any particular in-
8 dividual can be identified; or

9 (iii) permit anyone other than the
10 sworn officers and employees of the De-
11 partment of Homeland Security, or bureau
12 or agency thereof, or, with respect to appli-
13 cations filed with a qualified designated en-
14 tity, that qualified designated entity, to ex-
15 amine individual applications.

16 (B) REQUIRED DISCLOSURES.—The Sec-
17 retary shall provide the information furnished
18 under this section, or any other information de-
19 rived from such furnished information, to—

20 (i) a duly recognized law enforcement
21 entity in connection with a criminal inves-
22 tigation or prosecution, if such information
23 is requested in writing by such entity; or

24 (ii) an official coroner, for purposes of
25 affirmatively identifying a deceased indi-

1 vidual, whether or not the death of such
2 individual resulted from a crime.

3 (C) CONSTRUCTION.—

4 (i) IN GENERAL.—Nothing in this
5 paragraph shall be construed to limit the
6 use, or release, for immigration enforce-
7 ment purposes or law enforcement pur-
8 poses of information contained in files or
9 records of the Department of Homeland
10 Security pertaining to an application filed
11 under this section, other than information
12 furnished by an applicant pursuant to the
13 application, or any other information de-
14 rived from the application, that is not
15 available from any other source.

16 (ii) CRIMINAL CONVICTIONS.—Infor-
17 mation concerning whether the applicant
18 has at any time been convicted of a crime
19 may be used or released for immigration
20 enforcement or law enforcement purposes.

21 (D) CRIME.—Any person who knowingly
22 uses, publishes, or permits information to be ex-
23 amined in violation of this paragraph shall be
24 subject to a fine in an amount not to exceed
25 \$10,000.

1 (7) PENALTIES FOR FALSE STATEMENTS IN AP-
2 PLICATIONS.—

3 (A) CRIMINAL PENALTY.—Any person
4 who—

5 (i) files an application for status
6 under subsection (a) or (c) and knowingly
7 and willfully falsifies, conceals, or covers
8 up a material fact or makes any false, fic-
9 titious, or fraudulent statements or rep-
10 resentations, or makes or uses any false
11 writing or document knowing the same to
12 contain any false, fictitious, or fraudulent
13 statement or entry; or

14 (ii) creates or supplies a false writing
15 or document for use in making such an ap-
16 plication,

17 shall be fined in accordance with title 18,
18 United States Code, imprisoned not more than
19 5 years, or both.

20 (B) INADMISSIBILITY.—An alien who is
21 convicted of a crime under subparagraph (A)
22 shall be considered to be inadmissible to the
23 United States on the ground described in sec-
24 tion 212(a)(6)(C)(i) of the Immigration and
25 Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

1 (8) ELIGIBILITY FOR LEGAL SERVICES.—Sec-
2 tion 504(a)(11) of Public Law 104–134 (110 Stat.
3 1321–53 et seq.) shall not be construed to prevent
4 a recipient of funds under the Legal Services Cor-
5 poration Act (42 U.S.C. 2996 et seq.) from pro-
6 viding legal assistance directly related to an applica-
7 tion for adjustment of status under this section.

8 (9) APPLICATION FEES.—

9 (A) FEE SCHEDULE.—The Secretary shall
10 provide for a schedule of fees that—

11 (i) shall be charged for the filing of
12 applications for status under subsections
13 (a) and (c); and

14 (ii) may be charged by qualified des-
15 ignated entities to help defray the costs of
16 services provided to such applicants.

17 (B) PROHIBITION ON EXCESS FEES BY
18 QUALIFIED DESIGNATED ENTITIES.—A quali-
19 fied designated entity may not charge any fee
20 in excess of, or in addition to, the fees author-
21 ized under subparagraph (A)(ii) for services
22 provided to applicants.

23 (C) DISPOSITION OF FEES.—

24 (i) IN GENERAL.—There is established
25 in the general fund of the Treasury a sepa-

1 rate account, which shall be known as the
2 “Agricultural Worker Immigration Status
3 Adjustment Account”. Notwithstanding
4 any other provision of law, there shall be
5 deposited as offsetting receipts into the ac-
6 count all fees collected under subparagraph
7 (A)(i).

8 (ii) USE OF FEES FOR APPLICATION
9 PROCESSING.—Amounts deposited in the
10 “Agricultural Worker Immigration Status
11 Adjustment Account” shall remain avail-
12 able to the Secretary until expended for
13 processing applications for status under
14 subsections (a) and (c).

15 (e) WAIVER OF NUMERICAL LIMITATIONS AND CER-
16 TAIN GROUNDS FOR INADMISSIBILITY.—

17 (1) NUMERICAL LIMITATIONS DO NOT APPLY.—

18 The numerical limitations of sections 201 and 202
19 of the Immigration and Nationality Act (8 U.S.C.
20 1151 and 1152) shall not apply to the adjustment
21 of aliens to lawful permanent resident status under
22 this section.

23 (2) WAIVER OF CERTAIN GROUNDS OF INAD-
24 MISSIBILITY.—In the determination of an alien’s eli-
25 gibility for status under subsection (a)(1)(C) or an

1 alien's eligibility for adjustment of status under sub-
2 section (c)(1)(B)(ii)(I), the following rules shall
3 apply:

4 (A) GROUNDS OF EXCLUSION NOT APPLI-
5 CABLE.—The provisions of paragraphs (5),
6 (6)(A), (7)(A), and (9)(B) of section 212(a) of
7 the Immigration and Nationality Act (8 U.S.C.
8 1182(a)) shall not apply.

9 (B) WAIVER OF OTHER GROUNDS.—

10 (i) IN GENERAL.—Except as provided
11 in clause (ii), the Secretary may waive any
12 other provision of such section 212(a) in
13 the case of individual aliens for humani-
14 tarian purposes, to ensure family unity, or
15 if otherwise in the public interest.

16 (ii) GROUNDS THAT MAY NOT BE
17 WAIVED.—Paragraphs (2)(A), (2)(B),
18 (2)(C), (3), and (4) of such section 212(a)
19 may not be waived by the Secretary under
20 clause (i).

21 (iii) CONSTRUCTION.—Nothing in this
22 subparagraph shall be construed as affect-
23 ing the authority of the Secretary other
24 than under this subparagraph to waive
25 provisions of such section 212(a).

1 (C) SPECIAL RULE FOR DETERMINATION
2 OF PUBLIC CHARGE.—An alien is not ineligible
3 for status under this section by reason of a
4 ground of inadmissibility under section
5 212(a)(4) of the Immigration and Nationality
6 Act (8 U.S.C. 1182(a)(4)) if the alien dem-
7 onstrates a history of employment in the United
8 States evidencing self-support without reliance
9 on public cash assistance.

10 (f) TEMPORARY STAY OF REMOVAL AND WORK AU-
11 THORIZATION FOR CERTAIN APPLICANTS.—

12 (1) BEFORE APPLICATION PERIOD.—Effective
13 on the date of enactment of this Act, the Secretary
14 shall provide that, in the case of an alien who is ap-
15 prehended before the beginning of the application
16 period described in subsection (a)(1)(B) and who
17 can establish a nonfrivolous case of eligibility for
18 temporary resident status under subsection (a) (but
19 for the fact that the alien may not apply for such
20 status until the beginning of such period), until the
21 alien has had the opportunity during the first 30
22 days of the application period to complete the filing
23 of an application for temporary resident status, the
24 alien—

25 (A) may not be removed; and

1 (B) shall be granted authorization to en-
2 gage in employment in the United States and
3 be provided an “employment authorized” en-
4 dorsement or other appropriate work permit for
5 such purpose.

6 (2) DURING APPLICATION PERIOD.—The Sec-
7 retary shall provide that, in the case of an alien who
8 presents a nonfrivolous application for temporary
9 resident status under subsection (a) during the ap-
10 plication period described in subsection (a)(1)(B),
11 including an alien who files such an application
12 within 30 days of the alien’s apprehension, and until
13 a final determination on the application has been
14 made in accordance with this section, the alien—

15 (A) may not be removed; and

16 (B) shall be granted authorization to en-
17 gage in employment in the United States and
18 be provided an “employment authorized” en-
19 dorsement or other appropriate work permit for
20 such purpose.

21 (g) ADMINISTRATIVE AND JUDICIAL REVIEW.—

22 (1) IN GENERAL.—There shall be no adminis-
23 trative or judicial review of a determination respect-
24 ing an application for status under subsection (a) or
25 (c) except in accordance with this subsection.

1 (2) ADMINISTRATIVE REVIEW.—

2 (A) SINGLE LEVEL OF ADMINISTRATIVE
3 APPELLATE REVIEW.—The Secretary shall es-
4 tablish an appellate authority to provide for a
5 single level of administrative appellate review of
6 such a determination.

7 (B) STANDARD FOR REVIEW.—Such ad-
8 ministrative appellate review shall be based
9 solely upon the administrative record estab-
10 lished at the time of the determination on the
11 application and upon such additional or newly
12 discovered evidence as may not have been avail-
13 able at the time of the determination.

14 (3) JUDICIAL REVIEW.—

15 (A) LIMITATION TO REVIEW OF RE-
16 MOVAL.—There shall be judicial review of such
17 a determination only in the judicial review of an
18 order of removal under section 242 of the Im-
19 migration and Nationality Act (8 U.S.C. 1252).

20 (B) STANDARD FOR JUDICIAL REVIEW.—
21 Such judicial review shall be based solely upon
22 the administrative record established at the
23 time of the review by the appellate authority
24 and the findings of fact and determinations
25 contained in such record shall be conclusive un-

1 less the applicant can establish abuse of discre-
2 tion or that the findings are directly contrary to
3 clear and convincing facts contained in the
4 record considered as a whole.

5 (h) DISSEMINATION OF INFORMATION ON ADJUST-
6 MENT PROGRAM.—Beginning not later than the first day
7 of the application period described in subsection (a)(1)(B),
8 the Secretary, in cooperation with qualified designated en-
9 tities, shall broadly disseminate information respecting the
10 benefits that aliens may receive under this section and the
11 requirements to be satisfied to obtain such benefits.

12 (i) REGULATIONS.—The Secretary shall issue regula-
13 tions to implement this section not later than the first day
14 of the seventh month that begins after the date of enact-
15 ment of this Act.

16 (j) EFFECTIVE DATE.—This section shall take effect
17 on the date that regulations are issued implementing this
18 section on an interim or other basis.

19 (k) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to the Secretary to carry
21 out this section \$40,000,000 for each of fiscal years 2006
22 through 2009.

23 **SEC. 102. CORRECTION OF SOCIAL SECURITY RECORDS.**

24 (a) IN GENERAL.—Section 208(d)(1) of the Social
25 Security Act (42 U.S.C. 408(d)(1)) is amended—

1 (1) in subparagraph (B)(ii), by striking “or” at
2 the end;

3 (2) in subparagraph (C), by inserting “or” at
4 the end;

5 (3) by inserting after subparagraph (C) the fol-
6 lowing:

7 “(D) who is granted status as a lawful tem-
8 porary resident under the Agricultural Job Oppor-
9 tunity, Benefits, and Security Act of 2005,”; and

10 (4) by striking “1990.” and inserting “1990, or
11 in the case of an alien described in subparagraph
12 (D), if such conduct is alleged to have occurred be-
13 fore the date on which the alien was granted lawful
14 temporary resident status.”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 subsection (a) shall take effect on the first day of the sev-
17 enth month that begins after the date of enactment of this
18 Act.

19 **TITLE II—REFORM OF H-2A**
20 **WORKER PROGRAM**

21 **SEC. 201. AMENDMENT TO THE IMMIGRATION AND NATION-**
22 **ALITY ACT.**

23 (a) IN GENERAL.—The Immigration and Nationality
24 Act is amended by striking section 218 (8 U.S.C. 1188)
25 and inserting the following:

1 “H-2A EMPLOYER APPLICATIONS

2 “SEC. 218. (a) APPLICATIONS TO THE SECRETARY
3 OF LABOR.—

4 “(1) IN GENERAL.—No alien may be admitted
5 to the United States as an H-2A worker, or other-
6 wise provided status as an H-2A worker, unless the
7 employer has filed with the Secretary of Labor an
8 application containing—

9 “(A) the assurances described in sub-
10 section (b);

11 “(B) a description of the nature and loca-
12 tion of the work to be performed;

13 “(C) the anticipated period (expected be-
14 ginning and ending dates) for which the work-
15 ers will be needed; and

16 “(D) the number of job opportunities in
17 which the employer seeks to employ the work-
18 ers.

19 “(2) ACCOMPANIED BY JOB OFFER.—Each ap-
20 plication filed under paragraph (1) shall be accom-
21 panied by a copy of the job offer describing the
22 wages and other terms and conditions of employ-
23 ment and the bona fide occupational qualifications
24 that shall be possessed by a worker to be employed
25 in the job opportunity in question.

1 “(b) ASSURANCES FOR INCLUSION IN APPLICA-
2 TIONS.—The assurances referred to in subsection (a)(1)
3 are the following:

4 “(1) JOB OPPORTUNITIES COVERED BY COL-
5 LECTIVE BARGAINING AGREEMENTS.—With respect
6 to a job opportunity that is covered under a collec-
7 tive bargaining agreement:

8 “(A) UNION CONTRACT DESCRIBED.—The
9 job opportunity is covered by a union contract
10 which was negotiated at arm’s length between a
11 bona fide union and the employer.

12 “(B) STRIKE OR LOCKOUT.—The specific
13 job opportunity for which the employer is re-
14 questing an H-2A worker is not vacant because
15 the former occupant is on strike or being locked
16 out in the course of a labor dispute.

17 “(C) NOTIFICATION OF BARGAINING REP-
18 RESENTATIVES.—The employer, at the time of
19 filing the application, has provided notice of the
20 filing under this paragraph to the bargaining
21 representative of the employer’s employees in
22 the occupational classification at the place or
23 places of employment for which aliens are
24 sought.

1 “(D) TEMPORARY OR SEASONAL JOB OP-
2 PORTUNITIES.—The job opportunity is tem-
3 porary or seasonal.

4 “(E) OFFERS TO UNITED STATES WORK-
5 ERS.—The employer has offered or will offer
6 the job to any eligible United States worker
7 who applies and is equally or better qualified
8 for the job for which the nonimmigrant is, or
9 the nonimmigrants are, sought and who will be
10 available at the time and place of need.

11 “(F) PROVISION OF INSURANCE.—If the
12 job opportunity is not covered by the State
13 workers’ compensation law, the employer will
14 provide, at no cost to the worker, insurance cov-
15 ering injury and disease arising out of, and in
16 the course of, the worker’s employment which
17 will provide benefits at least equal to those pro-
18 vided under the State’s workers’ compensation
19 law for comparable employment.

20 “(2) JOB OPPORTUNITIES NOT COVERED BY
21 COLLECTIVE BARGAINING AGREEMENTS.—With re-
22 spect to a job opportunity that is not covered under
23 a collective bargaining agreement:

24 “(A) STRIKE OR LOCKOUT.—The specific
25 job opportunity for which the employer is re-

1 questing an H-2A worker is not vacant because
2 the former occupant is on strike or being locked
3 out in the course of a labor dispute.

4 “(B) TEMPORARY OR SEASONAL JOB OP-
5 PORTUNITIES.—The job opportunity is tem-
6 porary or seasonal.

7 “(C) BENEFIT, WAGE, AND WORKING CON-
8 DITIONS.—The employer will provide, at a min-
9 imum, the benefits, wages, and working condi-
10 tions required by section 218A to all workers
11 employed in the job opportunities for which the
12 employer has applied under subsection (a) and
13 to all other workers in the same occupation at
14 the place of employment.

15 “(D) NONDISPLACEMENT OF UNITED
16 STATES WORKERS.—The employer did not dis-
17 place and will not displace a United States
18 worker employed by the employer during the
19 period of employment and for a period of 30
20 days preceding the period of employment in the
21 occupation at the place of employment for
22 which the employer seeks approval to employ
23 H-2A workers.

24 “(E) REQUIREMENTS FOR PLACEMENT OF
25 NONIMMIGRANT WITH OTHER EMPLOYERS.—

1 The employer will not place the nonimmigrant
2 with another employer unless—

3 “(i) the nonimmigrant performs du-
4 ties in whole or in part at 1 or more work
5 sites owned, operated, or controlled by
6 such other employer;

7 “(ii) there are indicia of an employ-
8 ment relationship between the non-
9 immigrant and such other employer; and

10 “(iii) the employer has inquired of the
11 other employer as to whether, and has no
12 actual knowledge or notice that, during the
13 period of employment and for a period of
14 30 days preceding the period of employ-
15 ment, the other employer has displaced or
16 intends to displace a United States worker
17 employed by the other employer in the oc-
18 cupation at the place of employment for
19 which the employer seeks approval to em-
20 ploy H-2A workers.

21 “(F) STATEMENT OF LIABILITY.—The ap-
22 plication form shall include a clear statement
23 explaining the liability under subparagraph (E)
24 of an employer if the other employer described

1 in such subparagraph displaces a United States
2 worker as described in such subparagraph.

3 “(G) PROVISION OF INSURANCE.—If the
4 job opportunity is not covered by the State
5 workers’ compensation law, the employer will
6 provide, at no cost to the worker, insurance cov-
7 ering injury and disease arising out of and in
8 the course of the worker’s employment which
9 will provide benefits at least equal to those pro-
10 vided under the State’s workers’ compensation
11 law for comparable employment.

12 “(H) EMPLOYMENT OF UNITED STATES
13 WORKERS.—

14 “(i) RECRUITMENT.—The employer
15 has taken or will take the following steps
16 to recruit United States workers for the
17 job opportunities for which the H-2A non-
18 immigrant is, or H-2A nonimmigrants are,
19 sought:

20 “(I) CONTACTING FORMER
21 WORKERS.—The employer shall make
22 reasonable efforts through the sending
23 of a letter by United States Postal
24 Service mail, or otherwise, to contact
25 any United States worker the em-

1 ployer employed during the previous
2 season in the occupation at the place
3 of intended employment for which the
4 employer is applying for workers and
5 has made the availability of the em-
6 ployer’s job opportunities in the occu-
7 pation at the place of intended em-
8 ployment known to such previous
9 workers, unless the worker was termi-
10 nated from employment by the em-
11 ployer for a lawful job-related reason
12 or abandoned the job before the work-
13 er completed the period of employ-
14 ment of the job opportunity for which
15 the worker was hired.

16 “(II) FILING A JOB OFFER WITH
17 THE LOCAL OFFICE OF THE STATE
18 EMPLOYMENT SECURITY AGENCY.—
19 Not later than 28 days before the
20 date on which the employer desires to
21 employ an H-2A worker in a tem-
22 porary or seasonal agricultural job op-
23 portunity, the employer shall submit a
24 copy of the job offer described in sub-
25 section (a)(2) to the local office of the

1 State employment security agency
2 which serves the area of intended em-
3 ployment and authorize the posting of
4 the job opportunity on ‘America’s Job
5 Bank’ or other electronic job registry,
6 except that nothing in this subclause
7 shall require the employer to file an
8 interstate job order under section 653
9 of title 20, Code of Federal Regula-
10 tions.

11 “(III) ADVERTISING OF JOB OP-
12 PORTUNITIES.—Not later than 14
13 days before the date on which the em-
14 ployer desires to employ an H-2A
15 worker in a temporary or seasonal ag-
16 ricultural job opportunity, the em-
17 ployer shall advertise the availability
18 of the job opportunities for which the
19 employer is seeking workers in a pub-
20 lication in the local labor market that
21 is likely to be patronized by potential
22 farm workers.

23 “(IV) EMERGENCY PROCE-
24 DURES.—The Secretary of Labor
25 shall, by regulation, provide a proce-

1 dure for acceptance and approval of
2 applications in which the employer
3 has not complied with the provisions
4 of this subparagraph because the em-
5 ployer’s need for H-2A workers could
6 not reasonably have been foreseen.

7 “(ii) JOB OFFERS.—The employer has
8 offered or will offer the job to any eligible
9 United States worker who applies and is
10 equally or better qualified for the job for
11 which the nonimmigrant is, or non-
12 immigrants are, sought and who will be
13 available at the time and place of need.

14 “(iii) PERIOD OF EMPLOYMENT.—The
15 employer will provide employment to any
16 qualified United States worker who applies
17 to the employer during the period begin-
18 ning on the date on which the foreign
19 worker departs for the employer’s place of
20 employment and ending on the date on
21 which 50 percent of the period of employ-
22 ment for which the foreign worker who is
23 in the job was hired has elapsed, subject to
24 the following requirements:

1 “(I) PROHIBITION.—No person
2 or entity shall willfully and knowingly
3 withhold United States workers before
4 the arrival of H-2A workers in order
5 to force the hiring of United States
6 workers under this clause.

7 “(II) COMPLAINTS.—Upon re-
8 ceipt of a complaint by an employer
9 that a violation of subclause (I) has
10 occurred, the Secretary of Labor shall
11 immediately investigate. The Sec-
12 retary of Labor shall, within 36 hours
13 of the receipt of the complaint, issue
14 findings concerning the alleged viola-
15 tion. If the Secretary of Labor finds
16 that a violation has occurred, the Sec-
17 retary of Labor shall immediately sus-
18 pend the application of this clause
19 with respect to that certification for
20 that date of need.

21 “(III) PLACEMENT OF UNITED
22 STATES WORKERS.—Before referring
23 a United States worker to an em-
24 ployer during the period described in
25 the matter preceding subclause (I),

1 the Secretary of Labor shall make all
2 reasonable efforts to place the United
3 States worker in an open job accept-
4 able to the worker, if there are other
5 job offers pending with the job service
6 that offer similar job opportunities in
7 the area of intended employment.

8 “(iv) STATUTORY CONSTRUCTION.—
9 Nothing in this subparagraph shall be con-
10 strued to prohibit an employer from using
11 such legitimate selection criteria relevant
12 to the type of job that are normal or cus-
13 tomary to the type of job involved so long
14 as such criteria are not applied in a dis-
15 criminatory manner.

16 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
17 OF EMPLOYER MEMBERS.—

18 “(1) IN GENERAL.—An agricultural association
19 may file an application under subsection (a) on be-
20 half of 1 or more of its employer members that the
21 association certifies in its application has or have
22 agreed in writing to comply with the requirements of
23 this section and sections 218A through 218C.

24 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
25 EMPLOYERS.—If an association filing an application

1 under paragraph (1) is a joint or sole employer of
2 the temporary or seasonal agricultural workers re-
3 quested on the application, the certifications granted
4 under subsection (e)(2)(B) to the association may be
5 used for the certified job opportunities of any of its
6 producer members named on the application, and
7 such workers may be transferred among such pro-
8 ducer members to perform the agricultural services
9 of a temporary or seasonal nature for which the cer-
10 tifications were granted.

11 “(d) WITHDRAWAL OF APPLICATIONS.—

12 “(1) IN GENERAL.—An employer may withdraw
13 an application filed pursuant to subsection (a), ex-
14 cept that if the employer is an agricultural associa-
15 tion, the association may withdraw an application
16 filed pursuant to subsection (a) with respect to 1 or
17 more of its members. To withdraw an application,
18 the employer or association shall notify the Sec-
19 retary of Labor in writing, and the Secretary of
20 Labor shall acknowledge in writing the receipt of
21 such withdrawal notice. An employer who withdraws
22 an application under subsection (a), or on whose be-
23 half an application is withdrawn, is relieved of the
24 obligations undertaken in the application.

1 “(2) LIMITATION.—An application may not be
2 withdrawn while any alien provided status under sec-
3 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-
4 tion is employed by the employer.

5 “(3) OBLIGATIONS UNDER OTHER STATUTES.—
6 Any obligation incurred by an employer under any
7 other law or regulation as a result of the recruit-
8 ment of United States workers or H-2A workers
9 under an offer of terms and conditions of employ-
10 ment required as a result of making an application
11 under subsection (a) is unaffected by withdrawal of
12 such application.

13 “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

14 “(1) RESPONSIBILITY OF EMPLOYERS.—The
15 employer shall make available for public examina-
16 tion, within 1 working day after the date on which
17 an application under subsection (a) is filed, at the
18 employer’s principal place of business or work site,
19 a copy of each such application (and such accom-
20 panying documents as are necessary).

21 “(2) RESPONSIBILITY OF THE SECRETARY OF
22 LABOR.—

23 “(A) COMPILATION OF LIST.—The Sec-
24 retary of Labor shall compile, on a current
25 basis, a list (by employer and by occupational

1 classification) of the applications filed under
2 this subsection. Such list shall include the wage
3 rate, number of workers sought, period of in-
4 tended employment, and date of need. The Sec-
5 retary of Labor shall make such list available
6 for examination in the District of Columbia.

7 “(B) REVIEW OF APPLICATIONS.—The
8 Secretary of Labor shall review such an applica-
9 tion only for completeness and obvious inac-
10 curacies. Unless the Secretary of Labor finds
11 that the application is incomplete or obviously
12 inaccurate, the Secretary of Labor shall certify
13 that the intending employer has filed with the
14 Secretary of Labor an application as described
15 in subsection (a). Such certification shall be
16 provided within 7 days of the filing of the appli-
17 cation.

18 “H-2A EMPLOYMENT REQUIREMENTS

19 “SEC. 218A. (a) PREFERENTIAL TREATMENT OF
20 ALIENS PROHIBITED.—Employers seeking to hire United
21 States workers shall offer the United States workers no
22 less than the same benefits, wages, and working conditions
23 that the employer is offering, intends to offer, or will pro-
24 vide to H-2A workers. Conversely, no job offer may im-
25 pose on United States workers any restrictions or obliga-

1 tions which will not be imposed on the employer’s H–2A
2 workers.

3 “(b) MINIMUM BENEFITS, WAGES, AND WORKING
4 CONDITIONS.—Except in cases where higher benefits,
5 wages, or working conditions are required by the provi-
6 sions of subsection (a), in order to protect similarly em-
7 ployed United States workers from adverse effects with
8 respect to benefits, wages, and working conditions, every
9 job offer which shall accompany an application under sec-
10 tion 218(b)(2) shall include each of the following benefit,
11 wage, and working condition provisions:

12 “(1) REQUIREMENT TO PROVIDE HOUSING OR A
13 HOUSING ALLOWANCE.—

14 “(A) IN GENERAL.—An employer applying
15 under section 218(a) for H–2A workers shall
16 offer to provide housing at no cost to all work-
17 ers in job opportunities for which the employer
18 has applied under that section and to all other
19 workers in the same occupation at the place of
20 employment, whose place of residence is beyond
21 normal commuting distance.

22 “(B) TYPE OF HOUSING.—In complying
23 with subparagraph (A), an employer may, at
24 the employer’s election, provide housing that
25 meets applicable Federal standards for tem-

1 porary labor camps or secure housing that
2 meets applicable local standards for rental or
3 public accommodation housing or other sub-
4 stantially similar class of habitation, or in the
5 absence of applicable local standards, State
6 standards for rental or public accommodation
7 housing or other substantially similar class of
8 habitation. In the absence of applicable local or
9 State standards, Federal temporary labor camp
10 standards shall apply.

11 “(C) FAMILY HOUSING.—When it is the
12 prevailing practice in the occupation and area
13 of intended employment to provide family hous-
14 ing, family housing shall be provided to workers
15 with families who request it.

16 “(D) WORKERS ENGAGED IN THE RANGE
17 PRODUCTION OF LIVESTOCK.—The Secretary of
18 Labor shall issue regulations that address the
19 specific requirements for the provision of hous-
20 ing to workers engaged in the range production
21 of livestock.

22 “(E) LIMITATION.—Nothing in this para-
23 graph shall be construed to require an employer
24 to provide or secure housing for persons who
25 were not entitled to such housing under the

1 temporary labor certification regulations in ef-
2 fect on June 1, 1986.

3 “(F) CHARGES FOR HOUSING.—

4 “(i) CHARGES FOR PUBLIC HOUS-
5 ING.—If public housing provided for mi-
6 grant agricultural workers under the aus-
7 pices of a local, county, or State govern-
8 ment is secured by an employer, and use of
9 the public housing unit normally requires
10 charges from migrant workers, such
11 charges shall be paid by the employer di-
12 rectly to the appropriate individual or enti-
13 ty affiliated with the housing’s manage-
14 ment.

15 “(ii) DEPOSIT CHARGES.—Charges in
16 the form of deposits for bedding or other
17 similar incidentals related to housing shall
18 not be levied upon workers by employers
19 who provide housing for their workers. An
20 employer may require a worker found to
21 have been responsible for damage to such
22 housing which is not the result of normal
23 wear and tear related to habitation to re-
24 imburse the employer for the reasonable
25 cost of repair of such damage.

1 “(G) HOUSING ALLOWANCE AS ALTER-
2 NATIVE.—

3 “(i) IN GENERAL.—If the requirement
4 under clause (ii) is satisfied, the employer
5 may provide a reasonable housing allow-
6 ance instead of offering housing under sub-
7 paragraph (A). Upon the request of a
8 worker seeking assistance in locating hous-
9 ing, the employer shall make a good faith
10 effort to assist the worker in identifying
11 and locating housing in the area of in-
12 tended employment. An employer who of-
13 fers a housing allowance to a worker, or
14 assists a worker in locating housing which
15 the worker occupies, pursuant to this
16 clause shall not be deemed a housing pro-
17 vider under section 203 of the Migrant and
18 Seasonal Agricultural Worker Protection
19 Act (29 U.S.C. 1823) solely by virtue of
20 providing such housing allowance. No
21 housing allowance may be used for housing
22 which is owned or controlled by the em-
23 ployer.

24 “(ii) CERTIFICATION.—The require-
25 ment of this clause is satisfied if the Gov-

1 ernor of the State certifies to the Secretary
2 of Labor that there is adequate housing
3 available in the area of intended employ-
4 ment for migrant farm workers, and H-2A
5 workers, who are seeking temporary hous-
6 ing while employed at farm work. Such
7 certification shall expire after 3 years un-
8 less renewed by the Governor of the State.

9 “(iii) AMOUNT OF ALLOWANCE.—

10 “(I) NONMETROPOLITAN COUN-
11 TRIES.—If the place of employment of
12 the workers provided an allowance
13 under this subparagraph is a non-
14 metropolitan county, the amount of
15 the housing allowance under this sub-
16 paragraph shall be equal to the state-
17 wide average fair market rental for
18 existing housing for nonmetropolitan
19 counties for the State, as established
20 by the Secretary of Housing and
21 Urban Development pursuant to sec-
22 tion 8(c) of the United States Hous-
23 ing Act of 1937 (42 U.S.C. 1437f(c)),
24 based on a 2 bedroom dwelling unit

1 and an assumption of 2 persons per
2 bedroom.

3 “(II) METROPOLITAN COUN-
4 TIES.—If the place of employment of
5 the workers provided an allowance
6 under this paragraph is in a metro-
7 politan county, the amount of the
8 housing allowance under this subpara-
9 graph shall be equal to the statewide
10 average fair market rental for existing
11 housing for metropolitan counties for
12 the State, as established by the Sec-
13 retary of Housing and Urban Devel-
14 opment pursuant to section 8(c) of
15 the United States Housing Act of
16 1937 (42 U.S.C. 1437f(c)), based on
17 a 2-bedroom dwelling unit and an as-
18 sumption of 2 persons per bedroom.

19 “(2) REIMBURSEMENT OF TRANSPORTATION.—

20 “(A) TO PLACE OF EMPLOYMENT.—A
21 worker who completes 50 percent of the period
22 of employment of the job opportunity for which
23 the worker was hired shall be reimbursed by the
24 employer for the cost of the worker’s transpor-
25 tation and subsistence from the place from

1 which the worker came to work for the em-
2 ployer (or place of last employment, if the
3 worker traveled from such place) to the place of
4 employment.

5 “(B) FROM PLACE OF EMPLOYMENT.—A
6 worker who completes the period of employment
7 for the job opportunity involved shall be reim-
8 bursed by the employer for the cost of the
9 worker’s transportation and subsistence from
10 the place of employment to the place from
11 which the worker, disregarding intervening em-
12 ployment, came to work for the employer, or to
13 the place of next employment, if the worker has
14 contracted with a subsequent employer who has
15 not agreed to provide or pay for the worker’s
16 transportation and subsistence to such subse-
17 quent employer’s place of employment.

18 “(C) LIMITATION.—

19 “(i) AMOUNT OF REIMBURSEMENT.—
20 Except as provided in clause (ii), the
21 amount of reimbursement provided under
22 subparagraph (A) or (B) to a worker or
23 alien shall not exceed the lesser of—

1 “(I) the actual cost to the worker
2 or alien of the transportation and sub-
3 sistence involved; or

4 “(II) the most economical and
5 reasonable common carrier transpor-
6 tation charges and subsistence costs
7 for the distance involved.

8 “(ii) DISTANCE TRAVELED.—No reim-
9 bursement under subparagraph (A) or (B)
10 shall be required if the distance traveled is
11 100 miles or less, or the worker is not re-
12 siding in employer-provided housing or
13 housing secured through an allowance as
14 provided in paragraph (1)(G).

15 “(D) EARLY TERMINATION.—If the worker
16 is laid off or employment is terminated for con-
17 tract impossibility (as described in paragraph
18 (4)(D)) before the anticipated ending date of
19 employment, the employer shall provide the
20 transportation and subsistence required by sub-
21 paragraph (B) and, notwithstanding whether
22 the worker has completed 50 percent of the pe-
23 riod of employment, shall provide the transpor-
24 tation reimbursement required by subparagraph
25 (A).

1 “(E) TRANSPORTATION BETWEEN LIVING
2 QUARTERS AND WORK SITE.—The employer
3 shall provide transportation between the work-
4 er’s living quarters and the employer’s work site
5 without cost to the worker, and such transpor-
6 tation will be in accordance with applicable laws
7 and regulations.

8 “(3) REQUIRED WAGES.—

9 “(A) IN GENERAL.—An employer applying
10 for workers under section 218(a) shall offer to
11 pay, and shall pay, all workers in the occupa-
12 tion for which the employer has applied for
13 workers, not less (and is not required to pay
14 more) than the greater of the prevailing wage
15 in the occupation in the area of intended em-
16 ployment or the adverse effect wage rate. No
17 worker shall be paid less than the greater of the
18 hourly wage prescribed under section 6(a)(1) of
19 the Fair Labor Standards Act of 1938 (29
20 U.S.C. 206(a)(1)) or the applicable State min-
21 imum wage.

22 “(B) LIMITATION.—Effective on the date
23 of enactment of the Agricultural Job Oppor-
24 tunity, Benefits, and Security Act of 2005 and
25 continuing for 3 years thereafter, no adverse ef-

1 fect wage rate for a State may be more than
2 the adverse effect wage rate for that State in
3 effect on January 1, 2003, as established by
4 section 655.107 of title 20, Code of Federal
5 Regulations.

6 “(C) REQUIRED WAGES AFTER 3-YEAR
7 FREEZE.—

8 “(i) FIRST ADJUSTMENT.—If Con-
9 gress does not set a new wage standard
10 applicable to this section before the first
11 March 1 that is not less than 3 years after
12 the date of enactment of this section, the
13 adverse effect wage rate for each State be-
14 ginning on such March 1 shall be the wage
15 rate that would have resulted if the ad-
16 verse effect wage rate in effect on January
17 1, 2003, had been annually adjusted, be-
18 ginning on March 1, 2006, by the lesser
19 of—

20 “(I) the 12 month percentage
21 change in the Consumer Price Index
22 for All Urban Consumers between De-
23 cember of the second preceding year
24 and December of the preceding year;
25 and

1 “(II) 4 percent.

2 “(ii) SUBSEQUENT ANNUAL ADJUST-
3 MENTS.—Beginning on the first March 1
4 that is not less than 4 years after the date
5 of enactment of this section, and each
6 March 1 thereafter, the adverse effect
7 wage rate then in effect for each State
8 shall be adjusted by the lesser of—

9 “(I) the 12 month percentage
10 change in the Consumer Price Index
11 for All Urban Consumers between De-
12 cember of the second preceding year
13 and December of the preceding year;
14 and

15 “(II) 4 percent.

16 “(D) DEDUCTIONS.—The employer shall
17 make only those deductions from the worker’s
18 wages that are authorized by law or are reason-
19 able and customary in the occupation and area
20 of employment. The job offer shall specify all
21 deductions not required by law which the em-
22 ployer will make from the worker’s wages.

23 “(E) FREQUENCY OF PAY.—The employer
24 shall pay the worker not less frequently than
25 twice monthly, or in accordance with the pre-

1 vailing practice in the area of employment,
2 whichever is more frequent.

3 “(F) HOURS AND EARNINGS STATE-
4 MENTS.—The employer shall furnish to the
5 worker, on or before each payday, in 1 or more
6 written statements—

7 “(i) the worker’s total earnings for
8 the pay period;

9 “(ii) the worker’s hourly rate of pay,
10 piece rate of pay, or both;

11 “(iii) the hours of employment which
12 have been offered to the worker (broken
13 out by hours offered in accordance with
14 and over and above the three-quarters
15 guarantee described in paragraph (4);

16 “(iv) the hours actually worked by the
17 worker;

18 “(v) an itemization of the deductions
19 made from the worker’s wages; and

20 “(vi) if piece rates of pay are used,
21 the units produced daily.

22 “(G) REPORT ON WAGE PROTECTIONS.—
23 Not later than June 1, 2007, the Comptroller
24 General of the United States shall prepare and
25 transmit to the Secretary of Labor, the Com-

1 committee on the Judiciary of the Senate, and
2 Committee on the Judiciary of the House of
3 Representatives, a report that addresses—

4 “(i) whether the employment of H–2A
5 or unauthorized aliens in the United States
6 agricultural work force has depressed
7 United States farm worker wages below
8 the levels that would otherwise have pre-
9 vailed if alien farm workers had not been
10 employed in the United States;

11 “(ii) whether an adverse effect wage
12 rate is necessary to prevent wages of
13 United States farm workers in occupations
14 in which H–2A workers are employed from
15 falling below the wage levels that would
16 have prevailed in the absence of the em-
17 ployment of H–2A workers in those occu-
18 pations;

19 “(iii) whether alternative wage stand-
20 ards, such as a prevailing wage standard,
21 would be sufficient to prevent wages in oc-
22 cupations in which H–2A workers are em-
23 ployed from falling below the wage level
24 that would have prevailed in the absence of
25 H–2A employment;

1 “(iv) whether any changes are war-
2 ranted in the current methodologies for
3 calculating the adverse effect wage rate
4 and the prevailing wage; and

5 “(v) recommendations for future wage
6 protection under this section.

7 “(H) COMMISSION ON WAGE STAND-
8 ARDS.—

9 “(i) ESTABLISHMENT.—There is es-
10 tablished the Commission on Agricultural
11 Wage Standards under the H-2A program
12 (in this subparagraph referred to as the
13 ‘Commission’).

14 “(ii) COMPOSITION.—The Commission
15 shall consist of 10 members as follows:

16 “(I) 4 representatives of agricul-
17 tural employers and 1 representative
18 of the Department of Agriculture,
19 each appointed by the Secretary of
20 Agriculture.

21 “(II) 4 representatives of agricul-
22 tural workers and 1 representative of
23 the Department of Labor, each ap-
24 pointed by the Secretary of Labor.

1 “(iii) FUNCTIONS.—The Commission
2 shall conduct a study that shall address—

3 “(I) whether the employment of
4 H–2A or unauthorized aliens in the
5 United States agricultural workforce
6 has depressed United States farm
7 worker wages below the levels that
8 would otherwise have prevailed if alien
9 farm workers had not been employed
10 in the United States;

11 “(II) whether an adverse effect
12 wage rate is necessary to prevent
13 wages of United States farm workers
14 in occupations in which H–2A work-
15 ers are employed from falling below
16 the wage levels that would have pre-
17 vailed in the absence of the employ-
18 ment of H–2A workers in those occu-
19 pations;

20 “(III) whether alternative wage
21 standards, such as a prevailing wage
22 standard, would be sufficient to pre-
23 vent wages in occupations in which
24 H–2A workers are employed from fall-
25 ing below the wage level that would

1 have prevailed in the absence of H-2A
2 employment;

3 “(IV) whether any changes are
4 warranted in the current methodolo-
5 gies for calculating the adverse effect
6 wage rate and the prevailing wage
7 rate; and

8 “(V) recommendations for future
9 wage protection under this section.

10 “(iv) FINAL REPORT.—Not later than
11 June 1, 2007, the Commission shall sub-
12 mit a report to the Congress setting forth
13 the findings of the study conducted under
14 clause (iii).

15 “(v) TERMINATION DATE.—The Com-
16 mission shall terminate upon submitting
17 its final report.

18 “(4) GUARANTEE OF EMPLOYMENT.—

19 “(A) OFFER TO WORKER.—The employer
20 shall guarantee to offer the worker employment
21 for the hourly equivalent of at least three-
22 fourths of the work days of the total period of
23 employment, beginning with the first work day
24 after the arrival of the worker at the place of
25 employment and ending on the expiration date

1 specified in the job offer. For purposes of this
2 subparagraph, the hourly equivalent means the
3 number of hours in the work days as stated in
4 the job offer and shall exclude the worker's
5 Sabbath and Federal holidays. If the employer
6 affords the United States or H-2A worker less
7 employment than that required under this para-
8 graph, the employer shall pay such worker the
9 amount which the worker would have earned
10 had the worker, in fact, worked for the guaran-
11 teed number of hours.

12 “(B) FAILURE TO WORK.—Any hours
13 which the worker fails to work, up to a max-
14 imum of the number of hours specified in the
15 job offer for a work day, when the worker has
16 been offered an opportunity to do so, and all
17 hours of work actually performed (including vol-
18 untary work in excess of the number of hours
19 specified in the job offer in a work day, on the
20 worker's Sabbath, or on Federal holidays) may
21 be counted by the employer in calculating
22 whether the period of guaranteed employment
23 has been met.

24 “(C) ABANDONMENT OF EMPLOYMENT,
25 TERMINATION FOR CAUSE.—If the worker vol-

1 untarily abandons employment before the end
2 of the contract period, or is terminated for
3 cause, the worker is not entitled to the ‘three-
4 fourths guarantee’ described in subparagraph
5 (A).

6 “(D) CONTRACT IMPOSSIBILITY.—If, be-
7 fore the expiration of the period of employment
8 specified in the job offer, the services of the
9 worker are no longer required for reasons be-
10 yond the control of the employer due to any
11 form of natural disaster, including but not lim-
12 ited to a flood, hurricane, freeze, earthquake,
13 fire, drought, plant or animal disease or pest in-
14 festation, or regulatory drought, before the
15 guarantee in subparagraph (A) is fulfilled, the
16 employer may terminate the worker’s employ-
17 ment. In the event of such termination, the em-
18 ployer shall fulfill the employment guarantee in
19 subparagraph (A) for the work days that have
20 elapsed from the first work day after the arrival
21 of the worker to the termination of employ-
22 ment. In such cases, the employer will make ef-
23 forts to transfer the United States worker to
24 other comparable employment acceptable to the
25 worker. If such transfer is not effected, the em-

1 ployer shall provide the return transportation
2 required in paragraph (2)(D).

3 “(5) MOTOR VEHICLE SAFETY.—

4 “(A) MODE OF TRANSPORTATION SUBJECT
5 TO COVERAGE.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in clauses (iii) and (iv), this sub-
8 section applies to any H-2A employer that
9 uses or causes to be used any vehicle to
10 transport an H-2A worker within the
11 United States.

12 “(ii) DEFINED TERM.—In this para-
13 graph, the term ‘uses or causes to be
14 used’—

15 “(I) applies only to transpor-
16 tation provided by an H-2A employer
17 to an H-2A worker, or by a farm
18 labor contractor to an H-2A worker
19 at the request or direction of an H-
20 2A employer; and

21 “(II) does not apply to—

22 “(aa) transportation pro-
23 vided, or transportation arrange-
24 ments made, by an H-2A work-
25 er, unless the employer specifi-

1 cally requested or arranged such
2 transportation; or

3 “(bb) car pooling arrange-
4 ments made by H-2A workers
5 themselves, using 1 of the work-
6 ers’ own vehicles, unless specifi-
7 cally requested by the employer
8 directly or through a farm labor
9 contractor.

10 “(iii) CLARIFICATION.—Providing a
11 job offer to an H-2A worker that causes
12 the worker to travel to or from the place
13 of employment, or the payment or reim-
14 bursement of the transportation costs of
15 an H-2A worker by an H-2A employer,
16 shall not constitute an arrangement of, or
17 participation in, such transportation.

18 “(iv) AGRICULTURAL MACHINERY AND
19 EQUIPMENT EXCLUDED.—This subsection
20 does not apply to the transportation of an
21 H-2A worker on a tractor, combine, har-
22 vester, picker, or other similar machinery
23 or equipment while such worker is actually
24 engaged in the planting, cultivating, or
25 harvesting of agricultural commodities or

1 the care of livestock or poultry or engaged
2 in transportation incidental thereto.

3 “(v) COMMON CARRIERS EX-
4 CLUDED.—This subsection does not apply
5 to common carrier motor vehicle transpor-
6 tation in which the provider holds itself out
7 to the general public as engaging in the
8 transportation of passengers for hire and
9 holds a valid certification of authorization
10 for such purposes from an appropriate
11 Federal, State, or local agency.

12 “(B) APPLICABILITY OF STANDARDS, LI-
13 CENSING, AND INSURANCE REQUIREMENTS.—

14 “(i) IN GENERAL.—When using, or
15 causing to be used, any vehicle for the pur-
16 pose of providing transportation to which
17 this subparagraph applies, each employer
18 shall—

19 “(I) ensure that each such vehi-
20 cle conforms to the standards pre-
21 scribed by the Secretary of Labor
22 under section 401(b) of the Migrant
23 and Seasonal Agricultural Worker
24 Protection Act (29 U.S.C. 1841(b))

1 and other applicable Federal and
2 State safety standards;

3 “(II) ensure that each driver has
4 a valid and appropriate license, as
5 provided by State law, to operate the
6 vehicle; and

7 “(III) have an insurance policy
8 or a liability bond that is in effect
9 which insures the employer against li-
10 ability for damage to persons or prop-
11 erty arising from the ownership, oper-
12 ation, or causing to be operated, of
13 any vehicle used to transport any H-
14 2A worker.

15 “(ii) AMOUNT OF INSURANCE RE-
16 QUIRED.—The level of insurance required
17 shall be determined by the Secretary of
18 Labor pursuant to regulations to be issued
19 under this subsection.

20 “(iii) EFFECT OF WORKERS’ COM-
21 PENSATION COVERAGE.—If the employer
22 of any H-2A worker provides workers’
23 compensation coverage for such worker in
24 the case of bodily injury or death as pro-
25 vided by State law, the following adjust-

1 ments in the requirements of subparagraph
2 (B)(i)(III) relating to having an insurance
3 policy or liability bond apply:

4 “(I) No insurance policy or liabil-
5 ity bond shall be required of the em-
6 ployer, if such workers are trans-
7 ported only under circumstances for
8 which there is coverage under such
9 State law.

10 “(II) An insurance policy or li-
11 ability bond shall be required of the
12 employer for circumstances under
13 which coverage for the transportation
14 of such workers is not provided under
15 such State law.

16 “(c) COMPLIANCE WITH LABOR LAWS.—An em-
17 ployer shall assure that, except as otherwise provided in
18 this section, the employer will comply with all applicable
19 Federal, State, and local labor laws, including laws affect-
20 ing migrant and seasonal agricultural workers, with re-
21 spect to all United States workers and alien workers em-
22 ployed by the employer, except that a violation of this as-
23 surance shall not constitute a violation of the Migrant and
24 Seasonal Agricultural Worker Protection Act (29 U.S.C.
25 1801 et seq.).

1 (a) and within 7 working days shall, by fax, cable, or other
2 means assuring expedited delivery, transmit a copy of no-
3 tice of action on the petition to the petitioner and, in the
4 case of approved petitions, to the appropriate immigration
5 officer at the port of entry or United States consulate (as
6 the case may be) where the petitioner has indicated that
7 the alien beneficiary (or beneficiaries) will apply for a visa
8 or admission to the United States.

9 “(c) CRITERIA FOR ADMISSIBILITY.—

10 “(1) IN GENERAL.—An H-2A worker shall be
11 considered admissible to the United States if the
12 alien is otherwise admissible under this section, sec-
13 tion 218, and section 218A, and the alien is not in-
14 eligible under paragraph (2).

15 “(2) DISQUALIFICATION.—An alien shall be
16 considered inadmissible to the United States and in-
17 eligible for nonimmigrant status under section
18 101(a)(15)(H)(ii)(a) if the alien has, at any time
19 during the past 5 years—

20 “(A) violated a material provision of this
21 section, including the requirement to promptly
22 depart the United States when the alien’s au-
23 thorized period of admission under this section
24 has expired; or

1 “(B) otherwise violated a term or condition
2 of admission into the United States as a non-
3 immigrant, including overstaying the period of
4 authorized admission as such a nonimmigrant.

5 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-
6 FUL PRESENCE.—

7 “(A) IN GENERAL.—An alien who has not
8 previously been admitted into the United States
9 pursuant to this section, and who is otherwise
10 eligible for admission in accordance with para-
11 graphs (1) and (2), shall not be deemed inad-
12 missible by virtue of section 212(a)(9)(B). If an
13 alien described in the preceding sentence is
14 present in the United States, the alien may
15 apply from abroad for H-2A status, but may
16 not be granted that status in the United States.

17 “(B) MAINTENANCE OF WAIVER.—An
18 alien provided an initial waiver of ineligibility
19 pursuant to subparagraph (A) shall remain eli-
20 gible for such waiver unless the alien violates
21 the terms of this section or again becomes ineli-
22 gible under section 212(a)(9)(B) by virtue of
23 unlawful presence in the United States after
24 the date of the initial waiver of ineligibility pur-
25 suant to subparagraph (A).

1 “(d) PERIOD OF ADMISSION.—

2 “(1) IN GENERAL.—The alien shall be admitted
3 for the period of employment in the application cer-
4 tified by the Secretary of Labor pursuant to section
5 218(e)(2)(B), not to exceed 10 months, supple-
6 mented by a period of not more than 1 week before
7 the beginning of the period of employment for the
8 purpose of travel to the work site and a period of
9 14 days following the period of employment for the
10 purpose of departure or extension based on a subse-
11 quent offer of employment, except that—

12 “(A) the alien is not authorized to be em-
13 ployed during such 14-day period except in the
14 employment for which the alien was previously
15 authorized; and

16 “(B) the total period of employment, in-
17 cluding such 14-day period, may not exceed 10
18 months.

19 “(2) CONSTRUCTION.—Nothing in this sub-
20 section shall limit the authority of the Secretary to
21 extend the stay of the alien under any other provi-
22 sion of this Act.

23 “(e) ABANDONMENT OF EMPLOYMENT.—

24 “(1) IN GENERAL.—An alien admitted or pro-
25 vided status under section 101(a)(15)(H)(ii)(a) who

1 abandons the employment which was the basis for
2 such admission or status shall be considered to have
3 failed to maintain nonimmigrant status as an H-2A
4 worker and shall depart the United States or be sub-
5 ject to removal under section 237(a)(1)(C)(i).

6 “(2) REPORT BY EMPLOYER.—The employer, or
7 association acting as agent for the employer, shall
8 notify the Secretary not later than 7 days after an
9 H-2A worker prematurely abandons employment.

10 “(3) REMOVAL BY THE SECRETARY.—The Sec-
11 retary shall promptly remove from the United States
12 any H-2A worker who violates any term or condi-
13 tion of the worker’s nonimmigrant status.

14 “(4) VOLUNTARY TERMINATION.—Notwith-
15 standing paragraph (1), an alien may voluntarily
16 terminate his or her employment if the alien prompt-
17 ly departs the United States upon termination of
18 such employment.

19 “(f) REPLACEMENT OF ALIEN.—

20 “(1) IN GENERAL.—Upon presentation of the
21 notice to the Secretary required by subsection (e)(2),
22 the Secretary of State shall promptly issue a visa to,
23 and the Secretary shall admit into the United
24 States, an eligible alien designated by the employer
25 to replace an H-2A worker—

1 “(A) who abandons or prematurely termi-
2 nates employment; or

3 “(B) whose employment is terminated
4 after a United States worker is employed pur-
5 suant to section 218(b)(2)(H)(iii), if the United
6 States worker voluntarily departs before the
7 end of the period of intended employment or if
8 the employment termination is for a lawful job-
9 related reason.

10 “(2) CONSTRUCTION.—Nothing in this sub-
11 section is intended to limit any preference required
12 to be accorded United States workers under any
13 other provision of this Act.

14 “(g) IDENTIFICATION DOCUMENT.—

15 “(1) IN GENERAL.—Each alien authorized to be
16 admitted under section 101(a)(15)(H)(ii)(a) shall be
17 provided an identification and employment eligibility
18 document to verify eligibility for employment in the
19 United States and verify such person’s proper iden-
20 tity.

21 “(2) REQUIREMENTS.—No identification and
22 employment eligibility document may be issued
23 which does not meet the following requirements:

24 “(A) The document shall be capable of re-
25 liably determining whether—

1 “(i) the individual with the identifica-
2 tion and employment eligibility document
3 whose eligibility is being verified is in fact
4 eligible for employment;

5 “(ii) the individual whose eligibility is
6 being verified is claiming the identity of
7 another person; and

8 “(iii) the individual whose eligibility is
9 being verified is authorized to be admitted
10 into, and employed in, the United States
11 as an H-2A worker.

12 “(B) The document shall be in a form that
13 is resistant to counterfeiting and to tampering.

14 “(C) The document shall—

15 “(i) be compatible with other data-
16 bases of the Secretary for the purpose of
17 excluding aliens from benefits for which
18 they are not eligible and determining
19 whether the alien is unlawfully present in
20 the United States; and

21 “(ii) be compatible with law enforce-
22 ment databases to determine if the alien
23 has been convicted of criminal offenses.

24 “(h) EXTENSION OF STAY OF H-2A ALIENS IN THE
25 UNITED STATES.—

1 “(1) EXTENSION OF STAY.—If an employer
2 seeks approval to employ an H-2A alien who is law-
3 fully present in the United States, the petition filed
4 by the employer or an association pursuant to sub-
5 section (a), shall request an extension of the alien’s
6 stay and a change in the alien’s employment.

7 “(2) LIMITATION ON FILING A PETITION FOR
8 EXTENSION OF STAY.—A petition may not be filed
9 for an extension of an alien’s stay—

10 “(A) for a period of more than 10 months;

11 or

12 “(B) to a date that is more than 3 years
13 after the date of the alien’s last admission to
14 the United States under this section.

15 “(3) WORK AUTHORIZATION UPON FILING A
16 PETITION FOR EXTENSION OF STAY.—

17 “(A) IN GENERAL.—An alien who is law-
18 fully present in the United States may com-
19 mence the employment described in a petition
20 under paragraph (1) on the date on which the
21 petition is filed.

22 “(B) DEFINITION.—For purposes of sub-
23 paragraph (A), the term ‘file’ means sending
24 the petition by certified mail via the United
25 States Postal Service, return receipt requested,

1 or delivered by guaranteed commercial delivery
2 which will provide the employer with a docu-
3 mented acknowledgment of the date of receipt
4 of the petition.

5 “(C) HANDLING OF PETITION.—The em-
6 ployer shall provide a copy of the employer’s pe-
7 tition to the alien, who shall keep the petition
8 with the alien’s identification and employment
9 eligibility document as evidence that the peti-
10 tion has been filed and that the alien is author-
11 ized to work in the United States.

12 “(D) APPROVAL OF PETITION.—Upon ap-
13 proval of a petition for an extension of stay or
14 change in the alien’s authorized employment,
15 the Secretary shall provide a new or updated
16 employment eligibility document to the alien in-
17 dicating the new validity date, after which the
18 alien is not required to retain a copy of the pe-
19 tition.

20 “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-
21 TION OF ALIENS WITHOUT VALID IDENTIFICATION
22 AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-
23 pired identification and employment eligibility docu-
24 ment, together with a copy of a petition for exten-
25 sion of stay or change in the alien’s authorized em-

1 ployment that complies with the requirements of
2 paragraph (1), shall constitute a valid work author-
3 ization document for a period of not more than 60
4 days beginning on the date on which such petition
5 is filed, after which time only a currently valid iden-
6 tification and employment eligibility document shall
7 be acceptable.

8 “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN
9 STATUS.—

10 “(A) MAXIMUM PERIOD.—The maximum
11 continuous period of authorized status as an
12 H–2A worker (including any extensions) is 3
13 years.

14 “(B) REQUIREMENT TO REMAIN OUTSIDE
15 THE UNITED STATES.—

16 “(i) IN GENERAL.—Subject to clause
17 (ii), in the case of an alien outside the
18 United States whose period of authorized
19 status as an H–2A worker (including any
20 extensions) has expired, the alien may not
21 again apply for admission to the United
22 States as an H–2A worker unless the alien
23 has remained outside the United States for
24 a continuous period equal to at least $\frac{1}{5}$
25 the duration of the alien’s previous period

1 of authorized status as an H-2A worker
2 (including any extensions).

3 “(ii) EXCEPTION.—Clause (i) shall
4 not apply in the case of an alien if the
5 alien’s period of authorized status as an
6 H-2A worker (including any extensions)
7 was for a period of not more than 10
8 months and such alien has been outside
9 the United States for at least 2 months
10 during the 12 months preceding the date
11 the alien again is applying for admission to
12 the United States as an H-2A worker.

13 “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS
14 SHEEPHERDERS.—Notwithstanding any provision of the
15 Agricultural Job Opportunity, Benefits, and Security Act
16 of 2005, aliens admitted under section
17 101(a)(15)(H)(ii)(a) for employment as shepherders—

18 “(1) may be admitted for a period of 12
19 months;

20 “(2) may be extended for a continuous period
21 of up to 3 years; and

22 “(3) shall not be subject to the requirements of
23 subsection (h)(5) relating to periods of absence from
24 the United States.

1 “WORKER PROTECTIONS AND LABOR STANDARDS
2 ENFORCEMENT

3 “SEC. 218C. (a) ENFORCEMENT AUTHORITY.—

4 “(1) INVESTIGATION OF COMPLAINTS.—

5 “(A) AGGRIEVED PERSON OR THIRD-PARTY
6 COMPLAINTS.—The Secretary of Labor shall es-
7 tablish a process for the receipt, investigation,
8 and disposition of complaints respecting a peti-
9 tioner’s failure to meet a condition specified in
10 section 218(b), or an employer’s misrepresenta-
11 tion of material facts in an application under
12 section 218(a). Complaints may be filed by any
13 aggrieved person or organization (including bar-
14 gaining representatives). No investigation or
15 hearing shall be conducted on a complaint con-
16 cerning such a failure or misrepresentation un-
17 less the complaint was filed not later than 12
18 months after the date of the failure, or mis-
19 representation, respectively. The Secretary of
20 Labor shall conduct an investigation under this
21 subparagraph if there is reasonable cause to be-
22 lieve that such a failure or misrepresentation
23 has occurred.

24 “(B) DETERMINATION ON COMPLAINT.—

25 Under such process, the Secretary of Labor

1 shall provide, within 30 days after the date
2 such a complaint is filed, for a determination as
3 to whether or not a reasonable basis exists to
4 make a finding described in subparagraph (C),
5 (D), (E), or (H). If the Secretary of Labor de-
6 termines that such a reasonable basis exists,
7 the Secretary of Labor shall provide for notice
8 of such determination to the interested parties
9 and an opportunity for a hearing on the com-
10 plaint, in accordance with section 556 of title 5,
11 United States Code, within 60 days after the
12 date of the determination. If such a hearing is
13 requested, the Secretary of Labor shall make a
14 finding concerning the matter not later than 60
15 days after the date of the hearing. In the case
16 of similar complaints respecting the same appli-
17 cant, the Secretary of Labor may consolidate
18 the hearings under this subparagraph on such
19 complaints.

20 “(C) FAILURES TO MEET CONDITIONS.—If
21 the Secretary of Labor finds, after notice and
22 opportunity for a hearing, a failure to meet a
23 condition of paragraph (1)(A), (1)(B), (1)(D),
24 (1)(F), (2)(A), (2)(B), or (2)(G) of section
25 218(b), a substantial failure to meet a condition

1 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),
2 (2)(E), or (2)(H) of section 218(b), or a mate-
3 rial misrepresentation of fact in an application
4 under section 218(a)—

5 “(i) the Secretary of Labor shall no-
6 tify the Secretary of such finding and may,
7 in addition, impose such other administra-
8 tive remedies (including civil money pen-
9 alties in an amount not to exceed \$1,000
10 per violation) as the Secretary of Labor
11 determines to be appropriate; and

12 “(ii) the Secretary may disqualify the
13 employer from the employment of aliens
14 described in section 101(a)(15)(H)(ii)(a)
15 for a period of 1 year.

16 “(D) WILLFUL FAILURES AND WILLFUL
17 MISREPRESENTATIONS.—If the Secretary of
18 Labor finds, after notice and opportunity for
19 hearing, a willful failure to meet a condition of
20 section 218(b), a willful misrepresentation of a
21 material fact in an application under section
22 218(a), or a violation of subsection (d)(1)—

23 “(i) the Secretary of Labor shall no-
24 tify the Secretary of such finding and may,
25 in addition, impose such other administra-

1 tive remedies (including civil money pen-
2 alties in an amount not to exceed \$5,000
3 per violation) as the Secretary of Labor
4 determines to be appropriate;

5 “(ii) the Secretary of Labor may seek
6 appropriate legal or equitable relief to ef-
7 fectuate the purposes of subsection (d)(1);
8 and

9 “(iii) the Secretary may disqualify the
10 employer from the employment of H-2A
11 workers for a period of 2 years.

12 “(E) DISPLACEMENT OF UNITED STATES
13 WORKERS.—If the Secretary of Labor finds,
14 after notice and opportunity for hearing, a will-
15 ful failure to meet a condition of section 218(b)
16 or a willful misrepresentation of a material fact
17 in an application under section 218(a), in the
18 course of which failure or misrepresentation the
19 employer displaced a United States worker em-
20 ployed by the employer during the period of em-
21 ployment on the employer’s application under
22 section 218(a) or during the period of 30 days
23 preceding such period of employment—

24 “(i) the Secretary of Labor shall no-
25 tify the Secretary of such finding and may,

1 in addition, impose such other administra-
2 tive remedies (including civil money pen-
3 alties in an amount not to exceed \$15,000
4 per violation) as the Secretary of Labor
5 determines to be appropriate; and

6 “(ii) the Secretary may disqualify the
7 employer from the employment of H-2A
8 workers for a period of 3 years.

9 “(F) LIMITATIONS ON CIVIL MONEY PEN-
10 ALTIES.—The Secretary of Labor shall not im-
11 pose total civil money penalties with respect to
12 an application under section 218(a) in excess of
13 \$90,000.

14 “(G) FAILURES TO PAY WAGES OR RE-
15 QUIRED BENEFITS.—If the Secretary of Labor
16 finds, after notice and opportunity for a hear-
17 ing, that the employer has failed to pay the
18 wages, or provide the housing allowance, trans-
19 portation, subsistence reimbursement, or guar-
20 antee of employment, required under section
21 218A(b), the Secretary of Labor shall assess
22 payment of back wages, or other required bene-
23 fits, due any United States worker or H-2A
24 worker employed by the employer in the specific
25 employment in question. The back wages or

1 other required benefits under section 218A(b)
2 shall be equal to the difference between the
3 amount that should have been paid and the
4 amount that actually was paid to such worker.

5 “(2) STATUTORY CONSTRUCTION.—Nothing in
6 this section shall be construed as limiting the au-
7 thority of the Secretary of Labor to conduct any
8 compliance investigation under any other labor law,
9 including any law affecting migrant and seasonal ag-
10 ricultural workers, or, in the absence of a complaint
11 under this section, under section 218 or 218A.

12 “(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF
13 ACTION.—H-2A workers may enforce the following rights
14 through the private right of action provided in subsection
15 (c), and no other right of action shall exist under Federal
16 or State law to enforce such rights:

17 “(1) The providing of housing or a housing al-
18 lowance as required under section 218A(b)(1).

19 “(2) The reimbursement of transportation as
20 required under section 218A(b)(2).

21 “(3) The payment of wages required under sec-
22 tion 218A(b)(3) when due.

23 “(4) The benefits and material terms and con-
24 ditions of employment expressly provided in the job
25 offer described in section 218(a)(2), not including

1 the assurance to comply with other Federal, State,
2 and local labor laws described in section 218A(c),
3 compliance with which shall be governed by the pro-
4 visions of such laws.

5 “(5) The guarantee of employment required
6 under section 218A(b)(4).

7 “(6) The motor vehicle safety requirements
8 under section 218A(b)(5).

9 “(7) The prohibition of discrimination under
10 subsection (d)(2).

11 “(c) PRIVATE RIGHT OF ACTION.—

12 “(1) MEDIATION.—Upon the filing of a com-
13 plaint by an H-2A worker aggrieved by a violation
14 of rights enforceable under subsection (b), and with-
15 in 60 days of the filing of proof of service of the
16 complaint, a party to the action may file a request
17 with the Federal Mediation and Conciliation Service
18 to assist the parties in reaching a satisfactory reso-
19 lution of all issues involving all parties to the dis-
20 pute. Upon a filing of such request and giving of no-
21 tice to the parties, the parties shall attempt medi-
22 ation within the period specified in subparagraph
23 (B).

24 “(A) MEDIATION SERVICES.—The Federal
25 Mediation and Conciliation Service shall be

1 available to assist in resolving disputes arising
2 under subsection (b) between H-2A workers
3 and agricultural employers without charge to
4 the parties.

5 “(B) 90-DAY LIMIT.—The Federal Medi-
6 ation and Conciliation Service may conduct me-
7 diation or other non-binding dispute resolution
8 activities for a period not to exceed 90 days be-
9 ginning on the date on which the Federal Medi-
10 ation and Conciliation Service receives the re-
11 quest for assistance unless the parties agree to
12 an extension of this period of time.

13 “(C) AUTHORIZATION.—

14 “(i) IN GENERAL.—Subject to clause
15 (ii), there are authorized to be appro-
16 priated to the Federal Mediation and Con-
17 ciliation Service \$500,000 for each fiscal
18 year to carry out this section.

19 “(ii) MEDIATION.—Notwithstanding
20 any other provision of law, the Director of
21 the Federal Mediation and Conciliation
22 Service is authorized to conduct the medi-
23 ation or other dispute resolution activities
24 from any other appropriated funds avail-
25 able to the Director and to reimburse such

1 appropriated funds when the funds are ap-
2 propriated pursuant to this authorization,
3 such reimbursement to be credited to ap-
4 propriations currently available at the time
5 of receipt.

6 “(2) MAINTENANCE OF CIVIL ACTION IN DIS-
7 TRICT COURT BY AGGRIEVED PERSON.—An H-2A
8 worker aggrieved by a violation of rights enforceable
9 under subsection (b) by an agricultural employer or
10 other person may file suit in any district court of the
11 United States having jurisdiction of the parties,
12 without regard to the amount in controversy, with-
13 out regard to the citizenship of the parties, and
14 without regard to the exhaustion of any alternative
15 administrative remedies under this Act, not later
16 than 3 years after the date the violation occurs.

17 “(3) ELECTION.—An H-2A worker who has
18 filed an administrative complaint with the Secretary
19 of Labor may not maintain a civil action under
20 paragraph (2) unless a complaint based on the same
21 violation filed with the Secretary of Labor under
22 subsection (a)(1) is withdrawn before the filing of
23 such action, in which case the rights and remedies
24 available under this subsection shall be exclusive.

1 “(4) PREEMPTION OF STATE CONTRACT
2 RIGHTS.—Nothing in this Act shall be construed to
3 diminish the rights and remedies of an H-2A worker
4 under any other Federal or State law or regulation
5 or under any collective bargaining agreement, except
6 that no court or administrative action shall be avail-
7 able under any State contract law to enforce the
8 rights created by this Act.

9 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-
10 ments by employees purporting to waive or modify
11 their rights under this Act shall be void as contrary
12 to public policy, except that a waiver or modification
13 of the rights or obligations in favor of the Secretary
14 of Labor shall be valid for purposes of the enforce-
15 ment of this Act. The preceding sentence may not
16 be construed to prohibit agreements to settle private
17 disputes or litigation.

18 “(6) AWARD OF DAMAGES OR OTHER EQUI-
19 TABLE RELIEF.—

20 “(A) If the court finds that the respondent
21 has intentionally violated any of the rights en-
22 forceable under subsection (b), it shall award
23 actual damages, if any, or equitable relief.

1 “(B) Any civil action brought under this
2 section shall be subject to appeal as provided in
3 chapter 83 of title 28, United States Code.

4 “(7) WORKERS’ COMPENSATION BENEFITS; EX-
5 CLUSIVE REMEDY.—

6 “(A) Notwithstanding any other provision
7 of this section, where a State’s workers’ com-
8 pensation law is applicable and coverage is pro-
9 vided for an H-2A worker, the workers’ com-
10 pensation benefits shall be the exclusive remedy
11 for the loss of such worker under this section
12 in the case of bodily injury or death in accord-
13 ance with such State’s workers’ compensation
14 law.

15 “(B) The exclusive remedy prescribed in
16 subparagraph (A) precludes the recovery under
17 paragraph (6) of actual damages for loss from
18 an injury or death but does not preclude other
19 equitable relief, except that such relief shall not
20 include back or front pay or in any manner, di-
21 rectly or indirectly, expand or otherwise alter or
22 affect—

23 “(i) a recovery under a State workers’
24 compensation law; or

1 “(ii) rights conferred under a State
2 workers’ compensation law.

3 “(8) TOLLING OF STATUTE OF LIMITATIONS.—

4 If it is determined under a State workers’ compensa-
5 tion law that the workers’ compensation law is not
6 applicable to a claim for bodily injury or death of an
7 H-2A worker, the statute of limitations for bringing
8 an action for actual damages for such injury or
9 death under subsection (c) shall be tolled for the pe-
10 riod during which the claim for such injury or death
11 under such State workers’ compensation law was
12 pending. The statute of limitations for an action for
13 actual damages or other equitable relief arising out
14 of the same transaction or occurrence as the injury
15 or death of the H-2A worker shall be tolled for the
16 period during which the claim for such injury or
17 death was pending under the State workers’ com-
18 pensation law.

19 “(9) PRECLUSIVE EFFECT.—Any settlement by
20 an H-2A worker and H-2A employer reached
21 through the mediation process required under sub-
22 section (c)(1) shall preclude any right of action aris-
23 ing out of the same facts between the parties in any
24 Federal or State court or administrative proceeding,

1 unless specifically provided otherwise in the settle-
2 ment agreement.

3 “(10) SETTLEMENTS.—Any settlement by the
4 Secretary of Labor with an H-2A employer on be-
5 half of an H-2A worker of a complaint filed with the
6 Secretary of Labor under this section or any finding
7 by the Secretary of Labor under subsection
8 (a)(1)(B) shall preclude any right of action arising
9 out of the same facts between the parties under any
10 Federal or State court or administrative proceeding,
11 unless specifically provided otherwise in the settle-
12 ment agreement.

13 “(d) DISCRIMINATION PROHIBITED.—

14 “(1) IN GENERAL.—It is a violation of this sub-
15 section for any person who has filed an application
16 under section 218(a), to intimidate, threaten, re-
17 strain, coerce, blacklist, discharge, or in any other
18 manner discriminate against an employee (which
19 term, for purposes of this subsection, includes a
20 former employee and an applicant for employment)
21 because the employee has disclosed information to
22 the employer, or to any other person, that the em-
23 ployee reasonably believes evidences a violation of
24 section 218 or 218A or any rule or regulation per-
25 taining to section 218 or 218A, or because the em-

1 ployee cooperates or seeks to cooperate in an inves-
2 tigation or other proceeding concerning the employ-
3 er's compliance with the requirements of section 218
4 or 218A or any rule or regulation pertaining to ei-
5 ther of such sections.

6 “(2) DISCRIMINATION AGAINST H-2A WORK-
7 ERS.—It is a violation of this subsection for any per-
8 son who has filed an application under section
9 218(a), to intimidate, threaten, restrain, coerce,
10 blacklist, discharge, or in any manner discriminate
11 against an H-2A employee because such worker has,
12 with just cause, filed a complaint with the Secretary
13 of Labor regarding a denial of the rights enumer-
14 ated and enforceable under subsection (b) or insti-
15 tuted, or caused to be instituted, a private right of
16 action under subsection (c) regarding the denial of
17 the rights enumerated under subsection (b), or has
18 testified or is about to testify in any court pro-
19 ceeding brought under subsection (c).

20 “(e) AUTHORIZATION TO SEEK OTHER APPROPRIATE
21 EMPLOYMENT.—The Secretary of Labor and the Sec-
22 retary shall establish a process under which an H-2A
23 worker who files a complaint regarding a violation of sub-
24 section (d) and is otherwise eligible to remain and work
25 in the United States may be allowed to seek other appro-

1 puate employment in the United States for a period not
2 to exceed the maximum period of stay authorized for such
3 nonimmigrant classification.

4 “(f) ROLE OF ASSOCIATIONS.—

5 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
6 TION.—An employer on whose behalf an application
7 is filed by an association acting as its agent is fully
8 responsible for such application, and for complying
9 with the terms and conditions of sections 218 and
10 218A, as though the employer had filed the applica-
11 tion itself. If such an employer is determined, under
12 this section, to have committed a violation, the pen-
13 alty for such violation shall apply only to that mem-
14 ber of the association unless the Secretary of Labor
15 determines that the association or other member
16 participated in, had knowledge, or reason to know,
17 of the violation, in which case the penalty shall be
18 invoked against the association or other association
19 member as well.

20 “(2) VIOLATIONS BY AN ASSOCIATION ACTING
21 AS AN EMPLOYER.—If an association filing an appli-
22 cation as a sole or joint employer is determined to
23 have committed a violation under this section, the
24 penalty for such violation shall apply only to the as-
25 sociation unless the Secretary of Labor determines

1 that an association member or members participated
2 in or had knowledge, or reason to know of the viola-
3 tion, in which case the penalty shall be invoked
4 against the association member or members as well.

5 “DEFINITIONS

6 “SEC. 218D. For purposes of sections 218 through
7 218C:

8 “(1) AGRICULTURAL EMPLOYMENT.—The term
9 ‘agricultural employment’ means any service or ac-
10 tivity that is considered to be agricultural under sec-
11 tion 3(f) of the Fair Labor Standards Act of 1938
12 (29 U.S.C. 203(f)) or agricultural labor under sec-
13 tion 3121(g) of the Internal Revenue Code of 1986
14 (26 U.S.C. 3121(g)). For purposes of this para-
15 graph, agricultural employment includes employment
16 under section 101(a)(15)(H)(ii)(a).

17 “(2) BONA FIDE UNION.—The term ‘bona fide
18 union’ means any organization in which employees
19 participate and which exists for the purpose of deal-
20 ing with employers concerning grievances, labor dis-
21 putes, wages, rates of pay, hours of employment, or
22 other terms and conditions of work for agricultural
23 employees. Such term does not include an organiza-
24 tion formed, created, administered, supported, domi-
25 nated, financed, or controlled by an employer or em-
26 ployer association or its agents or representatives.

1 “(3) DISPLACE.—The term ‘displace’, in the
2 case of an application with respect to 1 or more H–
3 2A workers by an employer, means laying off a
4 United States worker from a job for which the H–
5 2A worker or workers is or are sought.

6 “(4) ELIGIBLE.—The term ‘eligible’, when used
7 with respect to an individual, means an individual
8 who is not an unauthorized alien (as defined in sec-
9 tion 274A(h)(3)).

10 “(5) EMPLOYER.—The term ‘employer’ means
11 any person or entity, including any farm labor con-
12 tractor and any agricultural association, that em-
13 ploys workers in agricultural employment.

14 “(6) H-2A EMPLOYER.—The term ‘H-2A em-
15 ployer’ means an employer who seeks to hire 1 or
16 more nonimmigrant aliens described in section
17 101(a)(15)(H)(ii)(a).

18 “(7) H-2A WORKER.—The term ‘H-2A worker’
19 means a nonimmigrant described in section
20 101(a)(15)(H)(ii)(a).

21 “(8) JOB OPPORTUNITY.—The term ‘job oppor-
22 tunity’ means a job opening for temporary full-time
23 employment at a place in the United States to which
24 United States workers can be referred.

25 “(9) LAYS OFF.—

1 “(A) IN GENERAL.—The term ‘lays off’,
2 with respect to a worker—

3 “(i) means to cause the worker’s loss
4 of employment, other than through a dis-
5 charge for inadequate performance, viola-
6 tion of workplace rules, cause, voluntary
7 departure, voluntary retirement, contract
8 impossibility (as described in section
9 218A(b)(4)(D)), or temporary layoffs due
10 to weather, markets, or other temporary
11 conditions; but

12 “(ii) does not include any situation in
13 which the worker is offered, as an alter-
14 native to such loss of employment, a simi-
15 lar employment opportunity with the same
16 employer (or, in the case of a placement of
17 a worker with another employer under sec-
18 tion 218(b)(2)(E), with either employer de-
19 scribed in such section) at equivalent or
20 higher compensation and benefits than the
21 position from which the employee was dis-
22 charged, regardless of whether or not the
23 employee accepts the offer.

24 “(B) STATUTORY CONSTRUCTION.—Noth-
25 ing in this paragraph is intended to limit an

1 employee's rights under a collective bargaining
2 agreement or other employment contract.

3 “(10) REGULATORY DROUGHT.—The term ‘reg-
4 ulatory drought’ means a decision subsequent to the
5 filing of the application under section 218 by an en-
6 tity not under the control of the employer making
7 such filing which restricts the employer’s access to
8 water for irrigation purposes and reduces or limits
9 the employer’s ability to produce an agricultural
10 commodity, thereby reducing the need for labor.

11 “(11) SEASONAL.—Labor is performed on a
12 ‘seasonal’ basis if—

13 “(A) ordinarily, it pertains to or is of the
14 kind exclusively performed at certain seasons or
15 periods of the year; and

16 “(B) from its nature, it may not be contin-
17 uous or carried on throughout the year.

18 “(12) SECRETARY.—The term ‘Secretary’
19 means the Secretary of Homeland Security.

20 “(13) TEMPORARY.—A worker is employed on a
21 ‘temporary’ basis where the employment is intended
22 not to exceed 10 months.

23 “(14) UNITED STATES WORKER.—The term
24 ‘United States worker’ means any worker, whether
25 a United States citizen or national, a lawfully admit-

1 ted permanent resident alien, or any other alien,
 2 who is authorized to work in the job opportunity
 3 within the United States, except an alien admitted
 4 or otherwise provided status under section
 5 101(a)(15)(H)(ii)(a).”.

6 (b) TABLE OF CONTENTS.—The table of contents of
 7 the Immigration and Nationality Act (8 U.S.C. 1101 et
 8 seq.) is amended by striking the item relating to section
 9 218 and inserting the following:

“Sec. 218. H-2A employer applications.

“Sec. 218A. H-2A employment requirements.

“Sec. 218B. Procedure for admission and extension of stay of H-2A workers.

“Sec. 218C. Worker protections and labor standards enforcement.

“Sec. 218D. Definitions.”.

10 **TITLE III—MISCELLANEOUS** 11 **PROVISIONS**

12 **SEC. 301. DETERMINATION AND USE OF USER FEES.**

13 (a) SCHEDULE OF FEES.—The Secretary shall estab-
 14 lish and periodically adjust a schedule of fees for the em-
 15 ployment of aliens under this Act, and a collection process
 16 for such fees from employers participating in the program
 17 provided under this Act. Such fees shall be the only fees
 18 chargeable to employers for services provided under this
 19 Act.

20 (b) DETERMINATION OF SCHEDULE.—

21 (1) IN GENERAL.—The schedule under sub-
 22 section (a) shall reflect a fee rate based on the num-
 23 ber of job opportunities indicated in the employer’s

1 application under section 218 of the Immigration
2 and Nationality Act, as added by section 201 of this
3 Act, and sufficient to provide for the direct costs of
4 providing services related to an employer's author-
5 ization to employ eligible aliens pursuant to this Act,
6 to include the certification of eligible employers, the
7 issuance of documentation, and the admission of eli-
8 gible aliens.

9 (2) PROCEDURE.—

10 (A) IN GENERAL.—In establishing and ad-
11 justing such a schedule, the Secretary shall
12 comply with Federal cost accounting and fee
13 setting standards.

14 (B) PUBLICATION AND COMMENT.—The
15 Secretary shall publish in the Federal Register
16 an initial fee schedule and associated collection
17 process and the cost data or estimates upon
18 which such fee schedule is based, and any sub-
19 sequent amendments thereto, pursuant to which
20 public comment shall be sought and a final rule
21 issued.

22 (c) USE OF PROCEEDS.—Notwithstanding any other
23 provision of law, all proceeds resulting from the payment
24 of the alien employment user fees shall be available with-
25 out further appropriation and shall remain available with-

1 out fiscal year limitation to reimburse the Secretary, the
2 Secretary of State, and the Secretary of Labor for the
3 costs of carrying out sections 218 and 218B of the Immi-
4 gration and Nationality Act, as added by section 201 of
5 this Act, and the provisions of this Act.

6 **SEC. 302. REGULATIONS.**

7 (a) REGULATIONS OF THE SECRETARY.—The Sec-
8 retary shall consult with the Secretary of Labor and the
9 Secretary of Agriculture on all regulations to implement
10 the duties of the Secretary under this Act.

11 (b) REGULATIONS OF THE SECRETARY OF STATE.—
12 The Secretary of State shall consult with the Secretary,
13 the Secretary of Labor, and the Secretary of Agriculture
14 on all regulations to implement the duties of the Secretary
15 of State under this Act.

16 (c) REGULATIONS OF THE SECRETARY OF LABOR.—
17 The Secretary of Labor shall consult with the Secretary
18 of Agriculture and the Secretary on all regulations to im-
19 plement the duties of the Secretary of Labor under this
20 Act.

21 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—
22 All regulations to implement the duties of the Secretary,
23 the Secretary of State, and the Secretary of Labor created
24 under sections 218, 218A, 218B, and 218C of the Immi-
25 gration and Nationality Act, as added by section 201, shall

1 take effect on the effective date of section 201 and shall
2 be issued not later than 1 year after the date of enactment
3 of this Act.

4 **SEC. 303. EFFECTIVE DATE.**

5 (a) IN GENERAL.—Except as otherwise provided, sec-
6 tions 201 and 301 shall take effect 1 year after the date
7 of enactment of this Act.

8 (b) REPORT.—Not later than 180 days after the date
9 of enactment of this Act, the Secretary shall prepare and
10 submit to the appropriate committees of Congress a report
11 that describes the measures being taken and the progress
12 made in implementing this Act.

○